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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 418

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

JONES & LAUGHLIN STEEL CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 20, 1946
CERTIORARI GRANTED DECEMBER 23, 1946

SUPREME COURT OF THE UNITED STATES

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Case No. R-5143

Before the National Labor Relations Board, Eighth Region

Case No. VIII-R-1056

IN THE MATTER OF JONES AND LAUGHLIN STEEL CORP., OTIS WORKS, *and* UNITED STEELWORKERS OF AMERICA (CIO)

Amended petition for investigation and certification of representatives pursuant to section 9 (c) of the National Labor Relations Act

Filed March 15, 1943

1. Name of employer—Jones and Laughlin Steel Corp., Otis Works.

2. Address—Jennings Road, Cleveland, Ohio.

3. General nature of business—Iron and steel manufacture.

4. Description of the bargaining unit which petitioner claims is appropriate—All patrolmen, watchmen & firemen, including "dump laborers" but excluding lieutenants, captains, and other supervisors.

5. Approximate number of employees in such unit—60.

6. Approximate total number of employees in plant or plants involved—4,700.

7. Number or percentage of employees in such unit who have designated or selected petitioner to be their representative for collective bargaining—42.

2 8. Who is the present bargaining representative of employees?

9. Names, addresses, and affiliation of any other known individuals or labor organizations who claim to represent any of the employees in such bargaining unit—None.

10. Is there an existing or recently expired contract and if so give expiration date?—None.

11. The undersigned hereby alleges that a question has arisen concerning the representation of the employees in the above bargaining unit, in that: Company refused to bargain until union is certified by the National Labor Relations Board.

The undersigned further alleges that said question concerning representation is a question affecting commerce within the meaning of said act.

The undersigned requests that pursuant to section 9 (c) of the National Labor Relations Act, the National Labor Relations Board investigate such controversy and certify to the parties the name or names of the representatives that have been designated or selected by said employees.

Name and address of employees or representatives filing the petition. (If made by a labor organization, give also the full name, local number and affiliation of the organization and the name and official position of the person acting for the organization.)

UNITED STEELWORKERS OF AMERICA (CIO).
By LEO E. CASEY.
804 Chester Ninth Bldg.
Phone: Pr. 5690.

Subscribed and sworn to before me this 15th day of March 1943 at Cleveland, Ohio.

[SEAL] ARTHUR STARK,
Field Examiner, N. L. R. B., Eighth Region.

Before the National Labor Relations Board, Eighth Region

Case No. VIII–R–1056

In the matter of JONES & LAUGHLIN STEEL CORPORATION, OTIS WORKS, *and* UNITED STEELWORKERS OF AMERICA, CIO

Transcript of testimony

ROOM 213,
PUBLIC SQUARE BUILDING,
Cleveland, Ohio, Thursday, April 8, 1943.

Pursuant to notice, the above-entitled matter came on for hearing at 10 a. m.

Before: LOUIS PLOST, Trial Examiner.

Appearances

Earl F. Blank, Director Personnel Relations, Pittsburgh, and, F. W. Mumper, Personnel Department, Otis Works, appearing on behalf of the Company.

William F. Donovan, District Director, 804 Chester-Ninth Building, Cleveland, Ohio, appearing on behalf of the CIO.

Offers in evidence

Trial Examiner PLOST. Do any of you gentlemen care to examine these documents before I offer them in evidence?

Mr. BLANK. I believe we have received copies.

Trial Examiner PLOST. I will direct the reporter to amend all Board documents as they may appear to show the Company's name as being "Jones & Laughlin Steel Corporation," with the word "corporation" spelled in full, "Otis Works."

At the same time, I will instruct the reporter to amend the caption of the case to show the correct designation of the Company.

I will now offer Board's Exhibit No. 1 in evidence. Is there any objection?

(No response.)

Let the record show there is no response. Board's Exhibit No. 1 is received in evidence.

(The document heretofore marked for identification as "Board's Exhibit No. 1" was received in evidence.)

* * * * *

Trial Examiner PLOST. * * * During our off the record discussion, we were able to arrive at various stipulations, which I will now read into the record.

These stipulations will be by and among all the parties to the proceeding. When the phrase "all the parties" is used, it is to mean the Jones & Laughlin Steel Corporation and the United Steelworkers of America, CIO.

The first stipulation arrived at is a stipulation regarding the business and interstate commerce status of the Company. I will now read the stipulation into the record.

It is stipulated by and among the parties hereto that Jones & Laughlin Steel Corporation, Otis Works, is a corporation organized and existing by virtue of the laws of the State of Pennsylvania, and is registered to do business in the State of Ohio, as well as other states of the Union.

The only plant of the Company affected by this proceeding and stipulation is the Company's Otis Works at Cleveland, Ohio, which works combine the Company's Lakeside and Riverside plants at Cleveland, Ohio.

At this Otis Works, the Company is engaged in the manufacture of steel and steel products in various forms. The principal raw materials used by the Company in the manufacture of these products are coal, iron ore and limestone.

During the year 1942, the raw materials used by the Company and the finished products manufactured by the Company at its Otis Works amounted, in each instance, to more than $1,000,000.

More than 50 per cent of these materials and finished products came to the Company and were shipped and sold by the Company to points outside the State of Ohio.

At its Otis Works, the Company employs 72 plant-protection employees; these employees are divided into the following categories: 58 patrolmen, 2 firemen, 2 dump laborers, 8 lieutenants, 2 captains.

The Company is engaged in production for the National War Effort.

The Company is engaged in commerce within the meaning of the National Labor Relations Act.

Do you so stipulate, Mr. Blank?

Mr. BLANK. I would suggest, on those captains, that you call them "fire captains" because it might be confusing with the captain of the whole group.

Trial Examiner PLOST. All right, let the reporter change the designation of two captains to read to fire captains.

Do you so stipulate, Mr. Blank?

Mr. BLANK. Yes.

Trial Examiner PLOST. Do you so stipulate, Mr. Donovan?

Mr. DONOVAN. Yes.

Trial Examiner PLOST. The second stipulation arrived at is on the labor organization involved.

I will read the stipulation into the record.

6 It is stipulated by and among the parties hereto that the United Steelworkers of America, CIO, is a labor organization within the meaning of the National Labor Relations Act.

Do you so stipulate, Mr. Donovan?

Mr. DONOVAN. I do.

Trial Examiner PLOST. Do you so stipulate, Mr. Blank?

Mr. BLANK. Yes, sir.

Trial Examiner PLOST. The third stipulation arrived at concerns the question of representation, which I will now read into the record.

It is stipulated by and among the parties hereto that on February 17, 1943, the representatives of the United Steelworkers of America, CIO, informed the Company that they represented a majority of the employees within an appropriate unit, consisting of all patrolmen, watchmen and firemen, including the dump laborers, but excluding lieutenants, captains and supervisors employed at its Otis Works, and requested recognition as the bargaining agency.

The Company at that time refused to recognize the United Steel Workers of America, CIO, until it had been certified by the National Labor Relations Board.

Do you so stipulate, Mr. Blank?

Mr. BLANK. I think that is substantially correct. I don't know about the date, but I don't think it is very important.

Trial Examiner PLOST. For the purposes of the record, it will be sufficient?

Mr. BLANK. I believe so.

Trial Examiner PLOST. Do you so stipulate, Mr. Donovan?

Mr. DONOVAN. I do.

Statement of Mr. Blank

Mr. BLANK. I would like to read into the record, Mr. Examiner, a statement in connection with the Company's policy on the bargaining unit. I will furnish the Board with copies of this statement.

Trial Examiner PLOST. You may read the statement into the record.

Mr. BLANK. The Otis Works is owned and operated by
7 Jones & McLaughlin Steel Corporation of Pittsburgh, Pennsylvania. The Corporation, with its subsidiary companies, employs approximately 40,000 people of which 4,700 are employed at the Otis Works. The Otis Works consists of two plants known as the Riverside Plant, employing approximately 3,200 people; and the Lakeside plant, employing approximately 1,500 people. The Otis Works was formerly owned and operated by The Otis Steel Company and was acquired by Jones & Laughlin Steel Corporation by purchase at close of business on June 30, 1942.

At the time of this acquisition Jones & Laughlin Steel Corporation had a labor agreement with the Steel Workers Organizing Committee covering its plants at Pittsburgh, Aliquippa, and McKeesport, Pennsylvania. The Otis Steel Company, while not having a formal written signed agreement with the Union, operated under a memorandum that served as a labor agreement, such memorandum having been effectuated through the United States Conciliation Service. On July 21, 1942, the United Steelworkers of America, successor to the Steel Workers Organizing Committee, served notice on the Jones & Laughlin Steel Corporation that it desired to terminate the labor agreement currently in effect, and on August 3, 1942 negotiations looking to the consummation of a new agreement were started. At the request of the Union, the Otis Works was considered as being one of the units of the Jones & Laughlin Steel Corporation to be included in the new collective bargaining agreement—this notwithstanding the agreement to be entered into was an exclusive collective bargaining agreement and the Union had never been certified as the bargaining agency for employees of the former Otis Steel Company.

The new agreement between the parties was consummated on December 11, 1942, to be effective as of December 11, 1942, to be

effective as of December 2, 1942, and said contract is still in effect. Reference to Section 1 of this very recently consummated agreement indicates that is was and still is the intention of the parties
8 thereto to provide for the economic and efficient operations of the plants and the prevention of strikes and other disturbances which interfere with production, all of which should result in harmonious relationships between the Union and the Corporation.

The term "employe" in that agreement is defined as excluding foremen or Assistant Foremen in charge of any classes of labor, Watchmen, Salaried Employees, and Nurses.

These four groups occupy positions which by virtue of the character thereof necessarily render them perforce management representatives. It is evident from the above exclusions that the enumerated groups have interests so akin to that of the Corporation that it was, as late as December 11, 1942, the desire of both the Corporation and the Union to have these people serve management's interest without other affiliation.

It is the position of the Jones & Laughlin Steel Corporation in this case that the unionization of watchmen or guards is not appropriate at any time—certainly not at the present time in the midst of the War Program. Any allegation that same is in fact appropriate is, in our opinion, a direct contravention of the covenants of the existing labor agreement designed to effect higher managerial efficiency and the promotion of the War Effort.

It must be borne in mind that these guards are charged with the responsibility for the protection of the physical plant and equipment of the Corporation. It is their duty to keep intruders out, to see that the rules and regulations of the Corporation are maintained within the plant for the benefit of all concerned, to see that the peace is kept, and to act as conservators of the legal rights of the Corporation.

The duties of these guards do not differ greatly from the duties performed by members of a city, county or state police force. They do, however, have the additional responsibility of carrying out assignments of management which are very often of a confidential nature, and allegiance to management must be unquestioned.

Any thing which might tend to be destructive to the discipline normally manifested in a guard force can have
9 no other effect than weakening the plant protection system set up to effectively preserve and maintain industrial operations.

In addition, it must be realized that those guards are now and for some time past have been sworn in as Auxiliary Military Police, and, in this connection, are under the direct supervision

and jurisdiction of the United States Army and are currently receiving instructions from officers of the United States Army.

We believe that no better explanation of the obligations and duties of these guards in respect to their military affiliation can be given than is set forth in the oath of allegiance which every guard must read and sign; viz.

"Agreement between the United States of America and John Doe (Plant Guard).

"In order that the existing military forces of the United States may be most effectively employed to combat activity against the enemies of the United States, the United States is approving the employment of certain guards as a civilian auxiliary to the military police for the purpose of guarding and protecting war material, war premises and war utilities from injury or destruction by the enemy or otherwise, including the making of arrests, as peace officers for violations of Federal laws, as well as for violation of orders and regulations issued by military authority. The United States requests that only persons physically fit, well trained in the use of arms and in the duties incident to their position, and of unquestionable loyalty to the United States be so employed.

"Now, therefore, I, John Doe, who have been or am about to be employed by Jones & Laughlin Steel Corporation, Pittsburgh, Pa., as a guard at Otis Works for the purpose of guarding certain war material, war premises, and war utilities, in consideration of my employment or the continuation of my employment, do agree with the United States of America that:

"(1) I will support and defend the Constitution of the United States against all enemies, foreign and domestic;

"(2) I will bear true faith and allegiance to the Constitution of the United States;

"(3) I will well and faithfully discharge my duty as a civilian auxiliary to the military police to protect war material, war premises, and war utilities against all enemies, foreign and domestic, and will obey any orders issued in connection therewith by the President, as Commander in Chief of the Army and Navy of the United States, and by his duly authorized officers.

"(4) I acknowledge that the appropriate Articles of War have been read and explained to me, and that in the performance of my duty to protect such war material, war premises, and war utilities, I am subject to military law during the period of my employment.

(Date) (Signature of Plant Guard)

(Witness—Commissioned Officer—U. S. Army)"

It is the position of this Corporation that the guards in question perform certain assigned work that is strictly representative of management, and for the reasons above assigned, it is respectfully requested that this petition be dismissed.

Trial Examiner PIOST. As I understand you, you also at this time formally move to dismiss the Petition on the grounds that the unit of guards is not appropriate?

Mr. BLANK. That's right.

Trial Examiner PIOST. The ruling on the motion under the Rules and Regulations of the Board must be referred to the Board itself in Washington, and will be so referred.

* * * * *

F. W. MUMPER, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Examination by Trial Examiner PIOST:

Q. State your name, your address and your connection with the Company, for the purposes of the record?

A. F. W. Mumper. Business address is the Otis Works, Jones & Laughlin Steel Corporation, Personnel Department.

Q. Mr. Mumper, you heard the reading of the stipulation regarding the commerce of the Company, in which the guard force was set out in more or less detail. There are 72 plant-protection employees; is that correct, approximately?

A. Approximately.

Q. 58 of whom are patrolmen; is that correct?

A. That would be approximately right.

Q. Now, what are the duties of these patrolmen or guards, as you call them?

A. To protect the plant property, the employees of the Company, and such other things of that nature that may be necessary.

Q. Are these men armed while they perform their duties? Do they carry weapons?

A. Frankly, I am not sure whether they do, now. I believe that they do.

Q. Do they wear uniforms?

A. Yes.

Q. Have all of these men taken the oath of an auxiliary policeman as given to them by the United States Army?

A. To the best of my knowledge, they have.

Q. Are they subject to the control of the United States Army officers, either stationed at the plant or in charge of the vicinity?

A. I have been informed that that is true.

Q. Do these men receive their pay from the Company or from the United States Army?

12 A. From the Company.

Q. Is the Company able to discharge these men, if they are not suitable?

A. So far as I know, they are.

Q. Does the Company consult with the officers of the United States Army before it discharges any of these men, if it does discharge any?

A. I haven't any personal knowledge of a discharge case since the Army has gone in. Now, whether the chief would consult with the Army in that respect, I wouldn't know.

Q. But your feeling is, your knowledge is that these men are what is commonly called "auxiliary military police" and in the Otis Works of the Company are controlled, handled, paid, and in every other way treated as auxiliary military police are treated in other plants?

A. Not being familiar with how military police are treated in other plants, I am afraid I couldn't answer the question.

Q. By that I mean, are these men to your knowledge sworn as auxiliary military police, subject to the control of the Army?

A. Yes.

Q. And their sole duty is the protection of the plant property in addition to their regular duties as plant protection, consideration the fact that the plant is a war production plant?

A. That's right.

Q. Now, in this category of employees, we have two firemen. Do you know what the duties of these firemen are?

A. Yes, sir.

Q. Will you state them, please?

A. Throughout the plant we have fire equipment, hose and fire equipment, wagons; these two firemen, one located at the Lakeside Works and one at our Riverside Works, have the job of keeping this equipment in as thorough—in condition; the extinguishers filled, the hose in good shape and so on and so forth.

Q. Now, in this category of employees, there are also

13 two dump laborers; do you know what their duties are?

A. Yes.

Q. Will you tell us what they are, please?

A. We have a section of the plant where refuse from the plant is dumped; this section is somewhat isolated. At one time, they maintained patrol service there. Then, it was decided that that was not necessary and we put laborers on at this dump and they recover the scrap from the slag, and the refuse that is dumped over there, and pile it up, and at the same time they are theoretically watching that section of the plant. They are really in no

sense watchmen, but they have been inherited by the police department by reason of that connection that they are just simply under the police department.

Q. Do they receive their orders from the police deparment?

A. That's right.

Q. The police department tells them when to go to work and what to do, and all those things?

A. Yes, sir.

Q. Now, I notice that in this category there are eight lieutenants and two captains. Are these the lieutenants and the captains who have control of and issue orders to the patrolmen, the firemen, and the dump laborers that we have been speaking about?

A. The two captains are the two men who are in charge of the fire equipment, one being at Riverside and one at Lakeside.

Q. Then the two fire captains are the same people as are also called the two firemen; is that right?

A. Except that they are supervisors?

Q. They are supervisors?

A. Yes.

Q. And the lieutenants are in charge of the police; is that correct?

A. That's right.

Q. Now, is there someone in charge of this whole set up other than the ones we have listed here in the stipulation?

A. Yes, we have a chief or plant warden.

14 Q. Do his duties include other duties than looking after these men? Does the plant warden have other duties than the control of police and fire departments?

A. I would say that is at least his major duty.

Q. His major duties?

A. Yes; he may be used for other purposes, but that would be his major duty.

Trial Examiner PLOST. That is all, thank you very much.

I would like to, Mr. Examiner, help a little bit with the questions which you asked Mr. Mumper in connection with the discharge of guards, and the relations to the military police, and I would like to read a couple of paragraphs from the Articles of War, which I think would answer that somewhat.

Trial Examiner PLOST. If you will just read them into the record, we will have them there and it will be very helpful.

Statement of Mr. Blank

Mr. BLANK. I don't think that there is any question at all that our police captain could discharge any of these people that have been sworn in as United States Army Auxiliary Police without

first having the sanction of the head of the military police in his district, for this reason, and I am quoting from Article 28 of the Articles of War: "Any person subject to military law who quits his organization or place of duty with the intent to avoid hazardous duty to shirk important service, shall be deemed a deserter."

And also Article 58, on desertion: "Any persons subject to military law who deserts or attempts to desert the service of the United States, shall, if the offense be committed in time of war, suffer death or other punishment as a court martial may direct, and if the offense be committed at any other time, such punishment excepting death that a court martial may direct."

In other words, unless the head of the military police knew that this man was being relieved of duty, they might pick him up as a deserter, so I think it would be very important that that man be dropped through the regular personnel records of the military police.

Trial Examiner PLOST. Is there anything else you want to state to clarify this situation as to the guards?

Mr. BLANK. I might read a couple of other articles from the Articles of War, just to emphasize the discipline that is necessary in handling the military police situation, and the responsibilities that are placed upon these men, not only as representatives of management, as we feel, but as representatives of the United States Army.

Article 62 reads: "Disrespect toward superior officer; any person subject to military law who behaves himself with disrespect toward his superior officer shall be punished as a court martial may direct."

And Article 66: "Any person subject to military law who attempts to create or who begins, incites, causes, or joins in any mutiny or sedition in any company, party, post, camp, detachment, guard or other command, shall suffer death or such other punishment as the court martial may direct."

And Article 67: "Failure to suppress mutiny or sedition; any officer or soldier who, being present at any mutiny, or sedition, does not use his utmost endeavor to suppress the same, or knowing or having reason to believe that a mutiny or sedition is to take place, does not without delay give information thereof to his commanding officer, shall suffer death or such other punishment as a court martial may direct."

I would like also to put in the record—I can't do it verbatim, but I can pretty much repeat, at least in principal, testimony of Mr. Joseph Larken, Vice President of the Bethlehem Steel Corporation, before the House Military Affairs Committee last Thursday, when discussing the question of the unionization of foremen: he made the statement that at one of their plants, the guards

had been unionized, and told of one instance where a guard found a union member asleep, belonging to the same organization and wanting to do his duty, at least so far as his responsibility to the Union was concerned, instead of reporting this man for sleeping he called up the head of the union and asked him what he should do.

The head of the union told him to forget about it. Which was done. Later, it came out that this had occurred.

I just answer that, and the Board can get the transcript for the exact wording of the testimony from the House Military Affairs Committee, to show what the implications of guards belonging to the same union as rank and file workmen might mean to discipline in a plant.

That is all I have at this time.

Trial Examiner PLOST. You made that last statement without the objection on the part of the Union; I merely wish to state that it is not appropriate at this time, and I will let it stand, however; you wouldn't care to cite the incident by page and number of the Congressional Record, and introduce the record? That would be the proper way to do this, but inasmuch as you have already made the statement without objection, I will leave it stand.

Mr. DONOVAN. Well, I want to enter an objection there, Mr. Examiner, to that last statement, because it is irrelevant and has no bearing whatsoever on this case of ours here. If I may, for the record.

Mr. BLANK. I believe I may be able to furnish you with the transcript, or at least a portion of it and the page number. It wasn't available yesterday.

Trial Examiner PLOST. Of course, you cannot do it at this time, but if you were to file a brief, it might be appropriate at that time.

Your objection will be sustained, Mr. Donovan, and I will direct that the statement made by Mr. Blank, beginning with the story of the plant guard having found a man asleep be physically expunged from the record—be stricken from the record and physically expunged from the record, except insofar as the right to cite the incident by page number in a transcript later to be used is reserved to the party.

Mr. Donovan, I understand that your Union has a contract with the Company covering certain employees of the Otis Works?

Mr. DONOVAN. We do.

Trial Examiner PLOST. Are you at this time prepared to introduce such a contract into evidence?

17 Mr. DONOVAN. I am.

Trial Examiner PLOST. Off the record.

(Discussion off the record.)

Trial Examiner PLOST. On the record. Let the record show Mr. Donovan, the representative of the Union, offers in evidence an agreement between Jones & Laughlin Corporation and the United Steelworkers of America, CIO, dated December 2, 1942. Will the reporter please mark it?

(The document above referred to was marked for identification as "CIO'S Exhibit No. 1.")

Trial Examiner PLOST. This document is marked by the reporter for identification as "CIO Exhibit No. 1," and is a printed booklet, with printed signatures, and does not purport to be the original. I will ask the Company if it has any objection to receiving this in evidence, inasmuch as it is not an original; if the Company has knowledge that this is a true copy, we may receive it.

Mr. BLANK. There is no objection, and we will certify that is a copy of the original.

Trial Examiner PLOST. CIO Exhibit No. 1 is received in evidence.

(The document heretofore marked for identification as "CIO'S Exhibit No. 1" was received in evidence.)

Trial Examiner PLOST. Mr. Donovan, in this agreement, which covers the Company's Otis Works, do you specifically omit plant-protection employees from the category?

Mr. DONOVAN. From this contract, we do. But we do feel, Mr. Examiner, that there is nothing to prevent us from going ahead with organizing this group of people and bargaining for them separately.

Not under this contract; we—I might say, for your information, that in a contract that we have with the United States Steel Corporation, the white-collar workers were eliminated. But even though that were the case, we went right ahead and organized

18 the white-collar workers, and the National Tube Company, Lorain, Ellwood City, and McKeesport signed a separate contract for that group.

Trial Examiner PLOST. Off the record.

(Discussion off the record.)

Trial Examiner PLOST. On the record. Mr. Mumper, will you please take the stand again?

* * * * * *

Examination by Trial Examiner PLOST.

Q. Mr. Mumper, you are the famous Mumper that testified a few moments ago in this proceeding regarding the guards?

A. Yes, sir.

Q. I will ask you if these guards, plant-protection employees meaning the guards and the firemen, and these two dump laborers, are carried on the Company's pay roll?

A. Yes, sir.

Q. How are they paid, on an hourly basis or on a monthly basis?

A. They are paid on an hourly rate of pay, payable every other Friday.

Q. Do they draw their pay at the same time other employees draw their pay?

A. They do.

Q. Is their pay set up and calculated and carried through the same pay roll department as it is carried—that takes care of the other employees?

A. It is.

Trial Examiner PLOST. Off the record.

(Discussion off the record.)

Trial Examiner PLOST. On the record.

By Trial Examiner PLOST:

Q. Are these employees subject to the same group benefit arrangements that are applied to other employees of the Company?

A. They are.

Trial Examiner PLOST. That is all. Do you have any questions you care to ask Mr. Mumper, Mr. Donovan?

Mr. DONOVAN. No; I have no further questions I would like to ask Mr. Mumper, no. But I would like to make a statement, if I may, for the record.

Trial Examiner PLOST. You are excused, Mr. Mumper.

Trial Examiner PLOST. Make your statement, Mr. Donovan.

Statement of Mr. Donovan

Mr. DONOVAN. That I think that owing to the fact that we are just organizing or have organized the patrolmen and they still have a captain and about eight lieutenants, I think the situation is well in hand out there, so far as supervision is concerned over their group, just as it is with the production workers and maintenance workers.

They also have ample supervision over them, and I cannot agree with Mr. Blank that if these people are permitted to belong to our Union and we are permitted to bargain for them, it is going to break down the morale of that group, because I think it is going to strengthen the morale, if anything, because after all when we are permitted to bargain for those people, we have got certain

responsibilities to assume in connection with it. We will not hesitate to assume our proper responsibilities when they are under our wing.

We have in the case of the production workers and maintenance workers, and I believe the record speaks for itself, and we will assume that same responsibility for this group. That is all.

Trial Examiner PLOST. Gentlemen, there has been filed and is part of Board's Exhibit No. 1, a statement of a field examiner concerning the claims of authorization for representation.

No further evidence regarding the claims of authorization for the purpose of representation is needed, as the statement of the field examiner is deemed by the Board to be sufficient for all purposes.

I will ask the Company if it contemplates any material change in the number of guards or plant-protection employees, firemen, and so forth, within the next 30 or 60 days. Any material change?

Mr. MUMPER. We should increase our force. We are unable to do so. The Army is after us all the time, but we have had those orders for quite some time and we have not been able to materially change the number of people.

I doubt if there is any practical difference now from what it was when those figures were submitted. The men are not available.

Trial Examiner PLOST. And probably will not be within the next 30 or 60 days?

Mr. MUMPER. No.

Trial Examiner PLOST. I will ask the Company, in the event the Board should order an election in this matter, whether the Company will cooperate with the Board in properly conducting the election, by furnishing us with the proper pay rolls and the facilities for holding an election?

Mr. BLANK. I am not prejudicing our position?

Trial Examiner PLOST. Not at all.

Mr. BLANK. But we always have—I can say that, in the past, cooperated to the fullest extent in conducting NLRB elections.

Trial Examiner PLOST: I wish to state that to the parties only in exceptional instances does the Board grant a request for oral argument before the Board itself.

I further wish to advise the parties that under Article 3, Section 9, of our Rules and Regulations, any party may file a brief with the Board within seven days after the close of the hearing, and I might state that if you find the time to be inadequate, the Board is very lenient in extending the additional time.

I will ask the parties to indicate at this time whether or not they care to file a brief, or whether, at least, they reserve the right to file a brief in this matter.

Mr. Donovan, do you care to file a brief?

Mr. BLANK. I believe we would like to file a brief, inasmuch as the part of the testimony which I offered was deleted, and I think properly so.

* * * * * *

21 *C. I. O. Exhibit No. 1*

AGREEMENT BETWEEN JONES AND LAUGHLIN STEEL CORPORATION AND THE UNITED STEELWORKERS OF AMERICA, CIO

December 2, 1942

AGREEMENT

This Agreement, dated December 2, 1942 (hereinafter referred to as the "1942 Agreement"), is between Jones & Laughlin Steel Corporation (hereinafter referred to as the "Corporation") and the United Steelworkers of America, or its successor (hereinafter referred to as the "Union") on behalf of all of the employes of the Corporation in its Pittsburgh, McKeesport, Otis and Aliquippa Works and at the Pittsburgh Warehouse.

Section 1

It is the intent and purpose of the parties hereto that this Agreement will promote economic and efficient operations of the plants, prevent strikes and other disturbances which interfere with production and thereby establish harmonious relationships between the Union and the Corporation by setting forth herein the basic Agreement covering rates of pay, hours of work and conditions of employment to be observed between the parties hereto.

The term "employe," as used in this Agreement, shall not include Foremen or Assistant Foremen in charge of any classes of labor, watchmen, salaried employees and nurses. A list of the occupations excluded by this Section will be provided the Union at each plant of the Corporation within sixty (60) days of the effective date of this Agreement. Any dispute in regard to such list may be subject to adjustment in accordance with the provisions of Section 7.

For the purposes of this Agreement, Foremen and As-
22 sistant Foremen shall be those who qualify for exemption under the provisions of the Fair Labor Standards Act as specified in the Administrator's Interpretative Bulletin effective October 24, 1940 and further provided that it shall not be the

policy of the Corporation to have Foremen or Assistant Foremen displace employes.

Section 2—Recognition

A. The Corporation recognizes the Union as the exclusive collective bargaining agency for all of its employes, except those holding positions on the excluded list referred to in Section 1. The Corporation recognizes and will not interfere with the right of its employes to become members of the Union. There shall be no discrimination, interference, restraint or coercion by the Corporation or any of its agents against any members because of membership in the Union. The Union, its members and agents, agrees not to intimidate or coerce employes into membership and also not to solicit membership on Corporation time or plant property.

B. In accordance with the Directive Order of the National War Labor Board in Case No. 485, dated November 30, 1942, the following provisions are included in this Agreement:

"In order to secure the increased production which will result from greater harmony between workers and employers and in the interest of increased cooperation between union and management, which cannot exist without a stable and responsible union, the parties hereto agree as follows:

"All employees who, 15 days after the date of the Directive Order of the National War Labor Board in this case are members of the union in good standing in accordance with the constitution and bylaws of the union, and those employees who may thereafter become members shall, during the life of the agreement as a condition of employment, remain members of the union in good standing.

23 "The Company, for said employees, shall deduct from the first pay of each month the union dues for the preceding month of one dollar ($1.00)[1] and promptly remit the same to the International Secretary-Treasurer of the union. The initiation fee of the union of three dollars ($3.00) shall be deducted by the Company and remitted to the International Secretary-Treasurer of the Union in the same manner as dues collections.

"The Union shall promptly furnish to the National War Labor Board and to the company a notarized list of members in good standing 15 days after the date of the Directive Order. If any employee named on that list asserts that he withdrew from membership in the union prior to that date and any dispute arises, the assertion or dispute shall be adjudicated by an arbiter ap-

[1] At the Otis Works the monthly dues shall be one dollar and twenty five cents ($1.25) when and if so approved by the National War Labor Board

pointed by the National War Labor Board whose decision shall be final and binding upon the union and the employee.

"The Union agrees that neither it nor any of its officers or members will intimidate or coerce employees into membership in the union. If any dispute arises (as to whether there has been any violation of this pledge or whether any employee affected by this clause has been deprived of good standing in any way contrary to the constitution and bylaws of the union) the dispute shall be regarded as a grievance and submitted to the grievance machinery and, if necessary, to the final determination of an arbitrator appointed by the National War Labor Board in the event that the collective-bargaining agreement does not provide for arbitration."

The Union shall indemnify, defend, and save the Corporation harmless against any and all claims, demands, suits, or other form of liability that shall arise out of or by reason of action taken or not taken by the Corporation in reliance upon certified lists furnished it by the Union or for the purpose of complying with any of the provisions of this Section.

Section 3—Wages

Effective February 15, 1942, there shall be an increase in wages of five and one-half cents (5½c) per hour which will make the new common labor rate 78c per hour or $6.24 per eight hour day.

The increase of five and one-half cents (5½c) per hour shall be paid in the same manner as the ten cents (10c) per hour increase of April 1, 1941; namely, by adding an additional five and one-half cents (5½c) per hour to the wage scale of March 31, 1941.

Rates now in effect and as increased as above provided, shall remain in effect for the duration of this Agreement, except as changed in accordance with the provisions of Section 11.

The Corporation agrees that, when so requested by the Union, it will eliminate Pay Period Pooling of earnings resulting from piecework or straight tonnage rates and substitute therefor daily computation of earnings which shall be not less than the guaranteed occupational hourly rate or seventy-eight cents (78c), whichever is the greater, multiplied by the number of hours worked by the employe on that day.

The above conversion shall be based upon the premise that the wage costs to the Corporation for each of the concerned occupations will not be substantially increased.

Trade apprentices in any plant of the Corporation shall receive not less than the minimum common labor rate for each hour worked during the first period of the trade apprentice training program.

Women employed to perform work on jobs heretofore performed by men shall receive the same pay for fully performing the same quantity and type of work. Any such jobs with respect to which either party may allege wage rate inequalities shall be subject to the provisions of Section 11.

Section 4—Hours of Work

A. This Section is intended to provide a basis for calculating overtime and shall not be construed as a guarantee of hours of work per day or per week.

B. (1) The normal work day shall be any regularly scheduled consecutive twenty-four (24) hour period comprising eight (8) consecutive hours of work and sixteen (16) consecutive hours of rest except for such rest periods as may be provided in accordance with practices heretofore prevailing in the plants of the Corporation; and the normal work week shall be five (5) consecutive work days followed by two (2) consecutive rest days within seven (7) consecutive days. A week shall consist of any seven (7) consecutive days regularly used by the Corporation for the determination of the pay of employes.

(2) If in Management's opinion it is necessary to establish schedules departing from this intent, the grievance committee of the plant and the management of the plant may, at the request of either party, confer to determine whether, based upon the facts of the situation, mutually satisfactory modified schedules can be arranged. It is agreed by both parties that diligent effort on the part of Management should result in not less than 85 per cent of all employees being scheduled on the normal work week (including those working on agreed-to schedules) as stated above and Management further agrees to furnish the grievance committee in each plant evidence of its performance in this respect from time to time as may be desired by the grievance committee.

(3) When less than four (4) hours are worked in any one day, such time is to be disregarded in the calculation of premium time for sixth and seventh day. However, should the aggregate number of hours worked during the calendar week exceed forty (40), time and one-half will be paid for all excess hours over forty (40).

C. (1) Hours worked in excess of eight (8) consecutive working hours or in excess of a total of forty (40) in a work week, or
26 days worked in excess of five (5) work days within the work week shall be paid for at one and one-half times the normal rate of pay.

(2) Overtime payment shall be made on the basis of either daily or weekly overtime hours worked, but an employee shall not be

paid both daily and weekly overtime for the same overtime hours worked.

D. Determination of the starting time of the daily and weekly work schedules shall be made by the Corporation and such schedules may be changed by the Corporation from time to time to suit varying conditions of the business; provided, however, that indiscriminate changes shall not be made, in such schedules and provided, further, that changes deemed necessary by the Corporation shall be made known to the plant representatives of the Union as far in advance of such changes as is possible.

E. Employees who are scheduled, and who report for work shall be paid, in the event no work for which they were scheduled is available, for two hours' work at the occupational rate of the occupation at which they were scheduled. At Management's discretion, the employees scheduled or notified to report may be assigned to other work for which they may be qualified in lieu of their being released. If an employee is assigned to a higher rated job, he shall be paid the higher rate. If an employee is assigned to work beyond the two hours, he shall be paid the occupational rate of the job to which assigned. In case an employee does not work the two hours but is paid for same, the two hours shall be considered allowed time and shall not be used in overtime calculation, but the fact that he is paid the two hours shall not prevent him from working a full forty (40) hour week at regular rates of pay.

F. Employees who are scheduled and report and actually begin work on the job for which scheduled at the start of a turn and through no fault of their own work less than four (4) hours, shall be paid for a minimum of four (4) hours at their occupational rate. If the employee works only a part of this four hours, the unworked part shall be considered as allowed time and shall not be included in overtime calculation.

27 G. The foregoing payments (E-F) shall be either at the regular or overtime rates depending upon whichever pertains in accordance with the provisions of this Section.

H. The provisions of subsection "E" and "F" will not apply in the event that strikes, stoppages in connection with labor disputes, fires, storms, floods, power or mechanical failures or other conditions over which the employer has no control, interfere with work being provided.

J. The scheduling practices now in effect at the various plants shall remain in effect.

(Note: It is agreed that nothing contained herein is intended to waive the rights of either the Corporation or the Union in respect to Presidential Executive Order No. 9240, or interpreta-

tions thereof by the United States Department of Labor, so long as such Order is in effect.)

Section 5—Vacations[3]

I. Purpose

The purpose of this Plan is to promote good will by providing vacations with pay for wage earner employes in recognition of their regular and continuous service over a number of years, and to enable those employes who qualify to enjoy a period of rest.

II. Eligibility

Each employe who, prior to July 1, 1943, and each succeeding calendar year during the continuance of this Agreement, has been continuously in the employ of the Corporation for three (3) or more years shall receive one (1) week's vacation with pay, and each employe who has been continuously in the employ of the Corporation for fifteen (15) or more years shall receive two (2) weeks' vacation with pay. It is agreed that the computation of length of continuous service shall be based on the Jones
28 & Laughlin Steel Corporation Pension Fund Rules for service continuity for all service up to and including April 30, 1941, which service shall be the total accumulated service as of that date and as provided under the Pension Fund Rules referred to above. Effective April 1, 1941, continuous service credit will be computed in accordance with Item III (Continuous Service) hereof. In addition to such service eligibility, each employe must have received earnings in at least sixty percent (60%) of the pay periods between July 1, 1942, and July 1, 1943.

III. Continuous Service

A. Continuous service shall be determined by the employe's first employment in any plant of the Corporation.

B. There shall be no deduction for any time lost which does not constitute a break in continuity of service.

C. Continuous service is broken by:

1. Voluntary quitting the service.

2. Termination due to discharge for cause, suspension or Leave of Absence, any of which continues for more than six (6) months.

3. Absence due either to lay-off or to disability, or both, which continues for more than two (2) years; provided, however, that employes injured while on duty shall accumulate credit for con-

[3] This vacation section does not apply to the Otis Works. At the Otis Works, the vacation plan in effect for 1942 by the Otis Steel Company shall remain in effect during the life of this Agreement.

tinuous service until termination of the period for which statutory compensation is payable and further provided that the employe returns to work as soon as he is physically able to do so.

4. Failure of employees on lay-off due to level of operations to report to Employment Office within five (5) days of registered mail notice. Ten days' time will be provided for men living outside the district at the time.

5. New employes and those hired after a break in continuity of service will be regarded as probationary employes for the first ninety (90) days of their employment and will receive no
29 continuous service credit during such period. During this period of probationary employment, probationary employes may be laid off or discharged as exclusively determined by Management; provided, that this will not be used for purposes of discrimination because of membership in the Union. Probationary employes continued in the service of the Corporation subsequent to ninety (90) days from date of original hiring shall receive full continuous service credit from date of original hiring.

6. Absence due to sickness, if the employe does not periodically (every thirty (30) days) report his status to the Employment Department or have an excuse for not so reporting that is satisfactory to Management.

IV. Length of Vacations

1. A one (1) week's vacation shall consist of seven (7) consecutive days and a two (2) weeks' vacation of fourteen (14) consecutive days.

2. One week's vacation must be taken in a continuous period but, two weeks' vacation may, if the employe and Management agree, be divided into two periods of one week each.

V. Vacation Season

1. The vacation season shall be from April 1 to December 31, and vacation shall be forfeited if not taken within that period unless the employe presents a grievance prior to December 15. Vacations will, so far as possible, be granted at times most desired by employes; but the final right to allotment of vacation period is exclusively reserved to the Corporation.

2. If, in the opinion of the Management, the Vacation Program would interfere with the attainment of desired production, at the option of the Corporation any eligible employe may be required to continue work and receive vacation pay in lieu of actual vacation from work. However, it is the intent that to the greatest degree possible, eligible employes shall receive the benefits of vacation from work.

VI. Vacation Wages—How Paid

1. Vacation wages will be paid in advance.

2. Employes who do not receive their vacation wages at the time of taking vacations, or employes who are required to work in lieu of a vacation, shall be given their vacation allowance immediately preceding December 25, unless the employe requests payment at an earlier date.

VII. Number of Hours to Be Paid For

Employes granted vacation shall be paid, per week, a minimum of forty (40) hours of wages and a maximum of forty-eight (48) hours of wages based on the average number of hours worked per week as indicated by the first two pays received in March.

VIII. Rate Per Hour

1. Employes granted vacations will be paid at their average rate of earnings per hour as indicated by the first two pays received in March.

2. The average rate of earnings per hour is construed to mean the wage earner employe's rate per hour based on the number of hours paid for.

3. If rehired employes are eligible for vacations due to previous service, the vacation pay will be calculated on the basis of their rate of pay during the last two pay periods in which they had earnings.

IX. Employes Entering Military Service

1. Employes who enter military service and are eligible for vacation during the calendar year in which they enter such service shall receive the amount of their vacation pay as shown on the wage earners' vacation payroll, provided this payroll has been prepared. In the event they enter military service before the vacation payroll is prepared, they will receive vacation pay based on their average rate of earnings per hour during the two pay periods closed and calculated prior to their date of leaving the service of the Corporation.

2. Employes who enter military service shall be con-
31 sidered as complying with the ruling that they must have worked in sixty per cent (60%) of the pay periods between July 1, 1942 and July 1, 1943, if they have received earnings in 60% of the pay periods between July 1, 1942, and the date ordered to report for induction.

3. Employes who volunteer for military service while on an occupational deferment granted by their draft board, shall not be granted their vacation allowance.

X. General Regulations

1. Vacations shall be arranged in advance and an employe shall not be permitted to trade his vacation privilege for an unauthorized absence taken in advance of the vacation period assigned him.

2. A vacation may be re-scheduled for another date, or granted in case of sickness or other physical disability, but no time allowance will be made for sickness or other incapacity occurring during the vacation.

3. Employes who voluntarily quit their employment shall not be entitled to vacation allowance.

Section 6—Seniority

It is understood and agreed that in all cases of promotion or increase of forces, length of continuous service shall prevail only if ability to perform the work is relatively equal. In cases of demotion and decrease of forces, length of continuous service shall prevail unless an involved employe is possessed of exceptional ability that should be given additional consideration.

Determination of plant units to which the above factors shall be applied shall be on a job and departmental basis and the details of same shall be worked out by agreement between the plant Management and the grievance committee at each plant with the proviso that the present practice at the several plants shall be continued. The rules governing "Continuity of Service" as specified in Section 5 hereof shall be followed in determining continuous service.

When an employee is reprimanded or suspended, he shall be given a copy of the Suspension Reprimand Notice and
32 another copy will be placed in his permanent employment record.

Employes desiring a transfer from one department to another or one plant to another shall arrange same through their respective employment offices and practices governing same shall continue as now in effect.

Leaves of Absence, when granted, shall be at the sole discretion of Management and the usual duration of a Leave shall be for thirty (30) days, renewable on application and for just cause in thirty (30) day periods to a maximum of 180 days.

In decrease of forces, due to depression, and after the passage of two pay periods, or more as may be mutually agreed upon between plant Management and the Union, probationary employes will be removed before regular employes have their normal work week reduced. Thereafter work will be shared until the remaining employes are averaging, for two pay periods, less than three

(3) days per week, at which time forces will be further reduced. This rule shall constitute a general standard, variations of which may be worked out as mutually agreed upon by plant Management and the Union.

Lines of natural job progression now in effect in the various plants shall be continued and every reasonable effort shall be made to mutually agree on same in places where they do not now exist.

The seniority standings of employes in a given department shall be kept on file in that department.

Section 7—Adjustment of Grievances

Should any difference arise between the Corporation and the Union or any employe of the Corporation as to the meaning and application of the provisions of this Agreement, or should any local trouble of any kind arise in any plant, there shall be no suspension of work on account of such differences but an earnest effort shall be made to settle such differences immediately in the following manner:

First, between the employe, with or without his grievance
33 committeeman or assistant grievance committeeman present, and the foreman of the department involved;

Second, between a member or members of the grievance committee, designated by the Union and the superintendent of the department;

Third, between a member or members of the general grievance committee, designated by the Union, and the General Superintendent or his designated representative;

Fourth, between the representatives of the National Organization of the Union and the representatives of the executives of the Corporation; and

Fifth, in the event the dispute shall not have been satisfactorily settled, the matter shall then be appealed to an impartial umpire to be appointed by mutual agreement of the parties hereto. The decision of the umpire shall be final. The expense and salary incident to the services of the umpire shall be paid jointly by the Corporation and the Union.

The above procedure shall be available to either the Corporation or the Union.

It is the purpose of this Section to provide procedure for prompt, equitable adjustments of alleged grievances and represents a general standard which may be modified, when plant management and the Union agree that modifications would be in the interests

of all concerned and provided such modifications are not in violation of this Agreement.

Grievances are to be processed through Step 4 within forty-five (45) days from the date of presentation of written grievance unless by mutual agreement, the time limit on any case or cases is extended.

It is agreed that the various works will be divided into zones, as mutually agreed upon by the Plant Management and the Union.

The actual number of members of the grievance committee at each works shall be mutually agreed upon between the General Superintendent of the Works and the Union, and in no case shall there be more than one grievance committeeman in any department. Each grievance committeeman may, if the local Union so elects, appoint one assistant grievance committeeman to cover each turn on which he does not work. Such assistants, to a maximum of three per zone, shall be provided the same treatment as grievance committeemen except that they may handle grievances only in the first step of the grievance procedure.

34

Only employes of a plant may serve as grievance committeemen or assistant grievance committeemen for that plant. The Union shall certify to the Corporation the names of the employes it designates as grievance committeemen and assistant grievance committeemen, and those so certified will be afforded, with approval of supervision, such time off, without pay, as may be required to conduct legitimate Union business, except that witnesses called in by the Corporation shall be paid by the Corporation.

It is agreed that each local Union may, if it so elects, designate one grievance man per local Union to serve as a general grievance committeeman (except the Aliquippa Local Union shall be permitted two general grievance committeemen). The general grievance committeemen shall assist zone committeemen in settling grievances and shall act as the Union representatives in the third step of grievance procedure.

In the event that a grievance arises in any zone concerning an employee or group of employees and a satisfactory settlement has not been reached with the foreman, it shall then be the privilege of the aggrieved employee or employees, with the zone committeeman, to take up the grievance in Step two (2) of the grievance procedure.

The zone committeeman or the general grievance committee shall prepare a Statement of Complaint on a Union form, properly filled out and indicating the section of the Agreement under which the case is to be processed, which will then be presented to the department superintendent. Arrangements will be made to discuss the case as soon as possible. Subsequent to this discussion,

the department superintendent will give the zone grievance committeeman a written answer.

35 Where a grievance has been answered by the superintendent in any department and the answer is not satisfactory to the grievance committee, it may be appealed to the General Superintendent of the Works or his designated representatives. The general grievance committee and the General Superintendent or his designated representatives shall hold joint meetings as often as they mutually deem necessary to hear cases appealed to them. Preceding these meetings the general grievance committee shall present to the General Superintendent, or his designated representatives, a list of the grievances to be discussed. In cases of discharge or other grievances that cannot be reasonably delayed, they shall be taken up at a special meeting to be properly arranged in advance with the General Superintendent, or his designated representatives, by the general grievance committee.

In cases where no agreement has been reached by the general grievance committee and the Works Management, they may then be appealed to the National Representative of the Organization and the executives of the Corporation and completed in accordance with the Agreement.

When the general grievance committee meets with the General Superintendent, or his designated representatives, other committeemen will meet with them only on grievances pertaining to their zone.

At all grievance committee meetings with the Management, only Works' employes with grievance committee credentials from the Union will be accepted. All meetings, regular or special, between the grievance committee, or member or members thereof, various superintendents, or other representatives of the Management, shall be arranged in advance, at which time the subject, or subjects, to be discussed will be outlined.

In all grievances heard by either the department superintendent, or other representatives of the Management, and the grievance committee, or member or members thereof, it shall be admissible for either side to bring in employes of the Corporation who are involved in the grievance or who may aid in its solution. The

36 grievance committeeman, employe, or employes involved in the grievance, called in by the Union will receive no pay from the Corporation for the time involved in the hearing of the grievance.

Grievances not appealed from the decision rendered in Steps one, two, three, or four within five (5) working days from the

date of such decision shall be considered settled on the basis of the decision last made and shall not be eligible for further appeal.

Awards or settlements of grievances shall, in no case, be made retroactive beyond the date on which the grievance was officially presented to the foreman except in the case of pay shortages.

It is the purpose of this Section to provide procedure for prompt, equitable adjustment of alleged grievances. Failure to file alleged grievance complaints promptly on the occurrence or knowledge of the grievance is construed to be not consistent with the intent of this Section or of this Agreement.

The Union reserves the right to refuse to take a grievance on behalf of any employe who is not a member of the Union, and the Management may refuse to give consideration to any grievance unless it is taken up through the regular procedure.

Section 8—Management

The Management of the Works and the direction of the working forces, including the right to hire, suspend, or discharge for proper cause, or transfer, and the right to relieve employes from duty because of lack of work, or for other legitimate reasons, is vested exclusively in the Corporation: Provided that this will not be used for purposes of discrimination against any member of the Union.

Section 9—Discharge Cases

In the exercise of its rights as set forth in Section 8, Management agrees that no employe shall be peremptorily discharged from and after the date hereof, but that in all instances in which Management may conclude that an employe's conduct may justify suspension or discharge, he shall be first suspended. Such
37 suspension shall be for not more than five (5) calendar days. During this period of initial suspension the employe may, if he believes that he has been unjustly dealt with, request a hearing and a statement of the offense before his department superintendent, or the representative of the General Superintendent of the Plant with or without the member or members of the grievance committee present as he may choose. At such hearing the facts concerning the case shall be made available to both parties. After such hearing Management may conclude whether the suspension shall be converted into discharge or, dependent upon the facts of the case, that such suspension may be extended or revoked. If the suspension is revoked the employe shall be returned to employment and receive full compensation at his regular rate of pay for the time lost, but in the event a disposition shall result in either the affirmation or extension of the suspension or discharge

of the employe, the employe may allege a grievance which shall be handled in accordance with the procedure of Section 7—"Adjustment of Grievances." Final decision on all suspension or discharge cases shall be made by the Corporation within five (5) days from the date of filing of the grievance, if any. Should it be determined by the Corporation or by an umpire in accordance with Step five (5) of the Grievance Procedure that the employe has been discharged or suspended unjustly, the Corporation shall reinstate the employe and pay full compensation at the employe's regular rate of pay for the time lost.

Section 10—Safety and Health

The Corporation shall continue to make reasonable provisions for the safety and health of its employes at the plant during the hours of their employment. All reasonable protective devices, wearing apparel and other equipment necessary to properly protect employes from injury shall be provided by the Corporation in accordance with the practices now prevailing at the respective plants. Proper heating and ventilating systems shall be installed where needed.

38 Section 11—Rate Establishment and Adjustment

It is recognized that changing conditions and circumstances may from time to time require adjustment of wage rates or modification of wage rate plans because of alleged inequalities, development of new manufacturing processes, changes in the character of jobs, or mechanical improvements brought about by the Corporation in the interest of improved methods and product. Under such circumstances the following procedure shall apply:

1. When a bona fide new job or position is to be established—

a. Management will develop an appropriate rate by the regular procedure in effect in the Corporation for its industrial engineering and industrial relations activities, including the employment of job evaluation, and in the case of incentive rates the application of accepted industrial engineering methods.

b. Such procedure having been conformed to, the rate may be established by Management to cover the job or position in question. The Union grievance committeeman or committeemen representing the employe or employes to be affected shall be informed by Management in advance concerning such rates. The rate having been established may subsequently be subject to adjustment as provided in Paragraph "c" below.

c. If, after a reasonable trial period following the establishment by Management of the rate or rates for new jobs or positions, grievances are alleged by either employes or Management concerning such rates—which grievances cannot be satisfactorily adjusted by mutual agreement—the question as to the equity of such rates in relation to the plant rate structure and the requirements of the job or position as established by sound industrial engineering procedures may be appealed to an impartial umpire in accordance with the provisions of Section 7 (Adjustment of Grievances), but no formal grievance may be presented under Section 7 until a reasonable period has elapsed since the installation of the rates and the operation of the equipment to which the new rates apply, which period will permit of study and adjustment, if necessary, of the rates to the varying conditions of operation attendant upon the establishment of the new operation to which the new jobs or positions apply. It is recognized that the term "reasonable period" may vary with the type of operation or equipment to which the new rates apply, but shall not be construed to apply to a period less than two (2) pay periods or in excess of six (6) pay periods unless otherwise mutually agreed.

2. Where alleged inequalities in wage rates prevail, the matter may be taken up for local Works adjustment and settlement made on a mutually satisfactory basis; provided, however, that grievances arising under this paragraph may not be processed beyond Step four of Section 7 hereof. This subsection is without prejudice to the rights of either the Corporation or the Union to submit cases arising hereunder to the National War Labor Board.

3. When technological changes are made in equipment, method of processing, material processed, or quality or production standards which would result in a substantial change in the character of the job, job duties or requirements; or where over a period of time an accumulation of minor changes of this type have occurred which, in total, have resulted in a substantial change in the character of the job, job duties or requirements, adjustments of hourly, incentive, and tonnage rates may be required. In such cases, Management may establish the new rates and the Union, if dissatisfied, may allege a grievance and carry it through all steps of the contract procedure established for the settlement of grievances for determination as to whether the earnings received by the employe from the new rates have resulted in a lowering of the rates applicable to him under Section 3 of this Agreement or failure to provide proper compensation for such increased effort, if any, brought about by the change in the job duties or requirements.

ion 12—Holidays

The following days shall be considered as holidays: Independence Day, Labor Day, Christmas.

On these holidays there shall be no regular production work except in cases of continuous operations; provided, however, that so long as the present war emergency exists, and in view of the government's request for all possible production, the Corporation will pay all employes at the rate of one and one-half times their normal regular rate of pay for hours worked on these holidays.

The term "continuous operations" applies to those departments which normally operate 24 hours per day, seven days per week and which cannot readily be suspended. Practices in regard to "continuous operations" shall be continued as at present in the various plants of the Corporation.

If, by reason of holiday observance, an employe otherwise scheduled to work on the day on which such holiday occurs is not required to work on that day, but is required to work what would have been his sixth day of work had he worked on such holiday, he shall be paid at the rate of time and one-half his regular rate of pay for hours worked on such day; where such hours are worked by mutual agreement between plant management and the grievance committee, the regular rate of pay shall apply.

The Corporation agrees to recognize Thanksgiving, New Year's Day and Memorial Day as additional holidays in compliance with the provisions of Presidential Executive Order No. 9240, dated September 10, 1942, so long as such Executive Order No. 9240 remains in effect.

Section 13—Prior Agreements

This Agreement shall supersede all existing and previous agreements. All local rules, regulations and customs heretofore established in conflict with this Agreement are hereby abolished, but prior practice and custom not in conflict with this Agreement may be continued.

41 No grievances which arose prior to the date of this 1942 Agreement shall be taken up for adjustment except that grievances which as of the date of the 1942 Agreement have been appealed in writing from a decision in the prior steps of the grievance procedure defined in the prior agreements or are in the process of being adjusted must be considered under the procedures of Section 7 of the 1942 Agreement and be determined in accordance with the applicable provisions of the 1942 Agreement.

Section 14—Military Service

Any employe, except a temporary employe, who is inducted into the land or naval forces of the United States or any employe who volunteers for enlistment and is granted a Special Military Leave of Absence and who makes application for re-employment within forty (40) days after he is first honorably discharged from service, shall be re-employed on the basis of his accumulated seniority; provided he is able to do the work and his work is available. While such employe is in the armed service of the United States, he shall continue to accumulate seniority as though in the active employ of the Corporation, and upon return to employment, shall be eligible for vacation due him on the basis of this accumulated seniority and in conformity with Section 5 hereof.

If an employe so applying for re-employment shall so request, he shall be granted a leave of absence without pay, not to exceed sixty (60) days before he shall return to work.

Section 15—Termination date

The terms and conditions of this Agreement shall continue in effect until changed or terminated, as follows:

a. Either party may at any time and from time to time give ten (10) days' written notice to the other party of the time for the commencement of a conference of the parties for the purpose of negotiating the terms and conditions of a change of the 1942 Agreement, which conference shall be at the office of
42 the Corporation in Pittsburgh, Pennsylvania, unless otherwise mutually agreed, and

b. If, because of failure to agree the 1942 Agreement is not changed by a written agreement entered into by the Corporation and the Union within thirty (30) days from the giving of said notice, then the 1942 Agreement and all of the provisions thereof, shall terminate upon the expiration of forty days from the giving of said notice.

Notice hereunder shall be given by registered mail, be completed by and at the time of mailing, and if by the Corporation, be addressed to United Steelworkers of America, Commonwealth Building, Pittsburgh, Pennsylvania, and if by the Union, be addressed to the Corporation at Jones & Laughlin Building, Pittsburgh, Pennsylvania. Either party may, by like written notice, change the address to which registered mail notice to it shall be given.

Signed this eleventh day of December 1942.

Jones & Laughlin Steel Corporation, by S. S. Marshall, Jr., Vice President, by E. F. Blank, Director of Personnel Relations; United Steelworkers of America, by Philip Murray, President; by David J. McDonald, Secretary-Treasurer, by Frank Burke, Director, District 16,
43 by John Grecula, Director, District 14, by Bert Hough, Director, District 20, by William F. Donovan, Director, District 28, by Clifford J. Shorts, International Representative, by Joseph Krivan, Representative, by Leo E. Casey, Representative; by Thomas P. McNamara, Local Union No. 185, by Thomas Gorman, Local Union No. 186, by Jack Ferline, Local Union No. 187, by William F. Krupp, Local Union No. 188, by Wilbur R. Eaton, Local Union No. 1257, by Jos. Roy Murray, Local Union No. 1843, by John T. Armstrong, Local Union No. 1843, by Sam Bielich, Local Union No. 1272, by Fred Skiles, Local Union No. 1272, by John T. Atkinson, Local Union No. 1211, by Michael Katchur, Local Union No. 1211, by Edward C. Hoffman, Local Union No. 2587, by Thomas J. Hickey, Local Union No. 2587.

44 Before National Labor Relations Board.

Report on ordered election

—— Filed May 31, 1943

Election Held May 26, 1943, at Cleveland, Ohio

Pursuant to the Rules and Regulations of the National Labor Relations Board (herein called the Board), the undersigned hereby reports that the election heretofore directed by the Board in the above-entitled case was conducted in accordance with the notice of election attached hereto and with the following results:

Approximate number of eligible voters	56
Count of Ballots:	
Total ballots cast	52
Total ballots challenged	None
Total void ballots	None
Total valid votes counted	52
Votes cast for United Steelworkers of America (CIO)	37
Votes cast against United Steelworkers of America (CIO)	15

The counting and tabulating were fairly and accurately done. Statements to such effect from the observers to the election are on file.

The Undersigned finds that United Steelworkers of America (CIO) has been designated and selected by a majority of the employees in the bargaining unit found by the Board in its De-

cision in this proceeding to be appropriate and recommends that the Board so certify.

Dated at Cleveland, Ohio, this 27th day of May 1943.

(S) WALTER E. TAAG,
Regional Director,
National Labor Relations Board.

47 Before the National Labor Relations Board

Certification of representatives

Issued June 5, 1943

On May 26, 1943, pursuant to the Decision and Direction of Election issued by the Board herein on May 8, 1943,[3] an election by secret ballot was conducted under the direction and supervision of the Regional Director for the Eighth Region (Cleveland, Ohio). Thereafter, on May 27, 1943, in accordance with the Rules and Regulations of the Board, a Report on Ordered Election was issued and served upon the parties. No objections to the said report, or to the conduct of the ballot, have been filed by any of the parties. The report shows as follows:

Approximate number of eligible voters	56
Total ballots cast	52
Total ballots challenged	0
Total void ballots	0
Total valid votes counted	52
Votes cast for United Steelworkers of America (CIO)	37
Votes cast against United Steelworkers of America (CIO)	15

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Sections 9 and 10, of National Labor Relations Board Rules and Regulations—Series 2, as amended.

It is hereby certified that the United Steelworkers of America (CIO) has been designated and selected by a majority of all patrolmen, watchmen, and firemen, including dump laborers employed by the Jones & Laughlin Steel Corporation at its Otis Works, Cleveland, Ohio, but excluding lieutenants, captains, and supervisors, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the Act, the said organization is the exclusive representative of all such

[3] 49 N. L. R. B., No. 50.

employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

Signed at Washington, D. C., this 5th day of June 1943.

[SEAL]

HARRY A. MILLIS,
Chairman,
GERARD D. REILLY,
Member,
JOHN M. HOUSTON,
Member,
National Labor Relations Board.

Case No. 8–C–1548

Before the National Labor Relations Board, Eighth Region

Case No. 8–C–1548

In the Matter of JONES AND LAUGHLIN STEEL CORP., *and* UNITED STEELWORKERS OF AMERICA (CIO)

Complaint

Issued September 16, 1943

It having been charged by the United Steelworkers of America, affiliated with the Congress of Industrial Organizations, hereinafter called the Union, that Jones & Laughlin Steel Corporation, hereinafter called the Respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, 49 Stat. 449, hereinafter referred to as the Act, the National Labor Relations Board, by its Regional Director for the Eighth Region, as agent for the National Labor Relations Board, designated by the National Labor Relations Board Rules and Regulations, Series 2, as amended, hereby issues its Complaint and alleges the following:

1. Respondent is and has been for a long period of time a corporation organized under and existing by virtue of the laws of the State of Pennsylvania, having its principal office in the City of Pittsburgh, Pennsylvania, and operating plants in the City of Cleveland, Ohio, known as the Otis Works, and plants at Pittsburgh, Pennsylvania, and Aliquippa, Pennsylvania, and now and for some time past has been continuously engaged in the production, manufacture, sale, and distribution of iron and steel products.

2. Respondent, in the course and conduct of its business, causes and has continuously caused over a long period of time a sub-

stantial part of the coal, limestone, ore, and other materials used in the manufacture of its products to be purchased and transported in interstate commerce from and through states of the United States other than the States of Ohio and Pennsylvania, to its plants in the States of Ohio and Pennsylvania, and causes and has continuously caused over a long period of time a large part of the products manufactured by it to be sold, shipped and transported in interstate commerce from its plants in the States of Ohio and Pennsylvania to, into and through states of the United States other than the States of Ohio and Pennsylvania.

3. Respondent is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

4. The Union is a labor organization within the meaning of Section 2 (5) of the Act.

5. All patrolmen, watchmen, and firemen, including dump laborers, employed by the Respondent at its Otis Works, Cleveland, Ohio, but excluding lieutenants, captains, and supervisors, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act, as found by the National Labor Relations Board in the matter of Jones & Laughlin Steel Corporation, Otis Works, and United Steelworkers of America (CIO), Case No. R-5143, decided May 3, 1943.

6. Since on or about May 26, 1943, and at all times thereafter, a majority of the employees in the aforesaid appropriate unit have designated and selected the Union as their representative for the purposes of collective bargaining with Respondent, such designation and selection having been made pursuant to an election by secret ballot directed by the National Labor Relations
51 Board in the aforesaid Case No. R-5143, and conducted under the supervision of the Regional Director for the Eighth Region of the National Labor Relations Board on May 26, 1943.

7. On June 5, 1943 the National Labor Relations Board, by virtue of and pursuant to the power vested in it by Section 9 (c) of the Act, and pursuant to Article III, Sections 9 and 10 of the National Labor Relations Board Rules and Regulations, Series 2, as amended, certified that the Union had been designated and selected by a majority of all the employees in the aforesaid appropriate unit as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the Act, the said Union was the exclusive representative of all the employees in the aforesaid appropriate unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment. At all times since the said certification the Union has been, and continues to be, the exclusive representative of all the employees in the aforesaid appro-

priate unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

8. Since on or about May 28, 1943, and at all times thereafter, the Union, by its officers, agents, and representatives, requested the Respondent to bargain collectively with respect to rates of pay, wages, hours of employment, and other conditions of employment with the Union as the exclusive representative of all the employees in the aforesaid appropriate unit.

9. Respondent, by its officers, agents, and representatives, while engaged as described above, has refused to recognize and accept as appropriate the aforesaid unit found by the National Labor Relations Board to be an appropriate unit as set forth in Paragraph 5, above, and has, since on or about June 23, 1943, and at all times thereafter, failed and refused and continues to fail and refuse to recognize the Union as the exclusive representative of its employees in the aforesaid appropriate unit, and has, since on or about June 23, 1943, and at all times thereafter, failed and refused and continues to fail and refuse to bargain with the Union with respect to rates of pay, wages, hours of employment, and other conditions of employment.

10. By the aforementioned acts of Respondent, acting through its officers, agents, and representatives, and by each of them, as alleged and set forth in Paragraph 9, above, Respondent did refuse and continues to refuse to bargain collectively with representatives of its employees, and by all of the said acts and by each of them did engage in and is now engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

11. By the aforementioned acts of Respondent, acting through its officers, agents, and representatives, and by each of them, as alleged and set forth in Paragraph 9, above, Respondent did interfere with, restrain and coerce, and is now interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and by all of the said acts, and by each of them, has engaged in and is now engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

12. The acts and conduct of Respondent, as alleged and set forth in Paragraphs 9, 10 and 11, above, occurring in connection with the operations of Respondent, as set forth and described in Paragraphs 1 and 2, above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

13. The acts and conduct of Respondent, as alleged and set forth in Paragraphs 9, 10 and 11, above, constitute unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7), of the Act.

Wherefore, the National Labor Relations Board, on this 16th day of September 1943, issues this, its Complaint,
53 against the Jones & Laughlin Steel Corporation, Respondent herein.

WALTER E. TAAG,
Regional Director,
National Labor Relations Board, Eighth Region.

Before National Labor Relations Board

Notice of hearing

Please take notice that on the 28th day of September 1943, at 10:00 a. m., Eastern War Time, at 702 Public Square Building, Cleveland, Ohio, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the Complaint attached hereto, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

A copy of the Charge upon which the Complaint is based is attached hereto.

You are further notified that you have the right to file with the Regional Director for the Eighth Region, with offices at 713 Public Square Building, Cleveland, Ohio, acting in this matter as agent of the National Labor Relations Board, an answer to the said Complaint, within ten (10) days from the service thereof.

Please take notice that duplicates of all exhibits which are offered in evidence will be required unless, pursuant to request or motion, the Trial Examiner in the exercise of his discretion and for good cause shown, directs that a given exhibit need not be duplicated.

In witness whereof the National Labor Relations Board has caused this, its Complaint and Notice of Hearing, to be signed by the Regional Director for the Eighth Region on this 16th day of September 1943.

WALTER E. TAGG,
Regional Director,
National Labor Relations Board.

54 Before National Labor Relations Board

Answer

Sworn to September 24, 1943

Comes now Jones & Laughlin Steel Corporation, Respondent in the above-entitled proceeding and files this, its Answer to the Complaint issued on September 16, 1943, by the Regional Di-

rector for the Eighth Region (hereinafter referred to as the Director), as agent of the National Labor Relations Board (hereinafter referred to as the Board), upon charges having been filed with the Director by United Steelworkers of America affiliated with the Congress of Industrial Organizations (hereinafter referred to as the Union) alleging that the Respondent has engaged and is now engaging in certain unfair labor practices violative of the National Labor Relations Act (hereinafter referred to as the Act).

1. Respondent admits that it is incorporated under the laws of the Commonwealth of Pennsylvania, maintains its principal office in the City of Pittsburgh, Pennsylvania, has been and is now operating steel mills located at Pittsburgh, Aliquippa and McKeesport, Pennsylvania and Cleveland, Ohio, all of which are engaged in the manufacture of semi-finished and finished steel products.

2. Respondent admits that the allegations contained in Paragraph 2 of the Complaint are substantially true in fact.

3. Respondent admits that it is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

4. Respondent admits that the Union is a labor organization within the meaning of Section 2 (5) of the Act.

5. Respondent denies that all patrolmen, watchmen and firemen, including dump laborers, employed by the Respondent at its Otis Works, Cleveland, Ohio, but excluding lieutenants, captains and supervisors, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act, as found in Board Case No. R-5143.

6. Respondent admits that on or about May 26, 1943, a majority of the employes in the alleged appropriate unit, by secret ballot selected the Union as their representative, that the election was held pursuant to the Board's Direction, conducted by Board's agents, all in conformity with the established procedure of the Board. The Complaint alleges that "at all times thereafter" the majority status continues: Respondent answers that it has no knowledge concerning the averment.

7. Respondent admits that on or about June 5, 1943, the Board issued its Certification of Representatives pursuant to Section 9 (a) and Section 9 (c) of the Act.

The Complaint alleges that "at all times since the said certification, the Union has been and continues to be the exclusive representative." Respondent answers that it does not know whether or not the designation is continuing.

8. Respondent admits that on or about May 28, 1943, the Union, by its agent, made a request of Respondent to bargain collectively

with the Union as representative of employes in the alleged appropriate unit.

9. Respondent admits that it has refused to recognize and accept as appropriate the unit found by the Board to be appropriate.

Respondent admits that on or about June 23, 1943, a refusal to bargain with representatives of the Union was made.

Respondent denies that "since on or about June 23, 1943, and at all times thereafter" it has refused to bargain with representatives of the Union.

The Board's agent, by letter dated August 14, 1943, directed an inquiry to Respondent; excerpts from said letter are as follows:

"The Union has submitted to me a letter under date of June 23, signed by your company. You state, in substance, that you consider a unit of guards inappropriate and you, therefore, decline to bargain with the certified Union for such class of employes. Will you please let me know if this is the definite position taken by the Company in this matter."

56 Respondent, by letter dated September 4, 1943, replied to the inquiry, the pertinent excerpts being as follow:

"Recently, we have had a National Labor Relations Board hearing in a case involving Plant Guards at the Pittsburgh Works of the Corporation and are awaiting a decision in that case. Therefore, we are deferring an answer with respect to bargaining with representatives of units composed of Plant Guards until such time as a final position of the Corporation has been established."

Respondent submits that its refusal to bargain is qualified and conditional and not final and conclusive as alleged in the Complaint.

10. Respondent denies the allegations contained in Paragraphs 10, 11, 12, and 13 of the Complaint.

JONES & LAUGHLIN STEEL CORPORATION,
By E. F. BLANK,
Director of Personnel Relations.

SEPTEMBER 24, 1943.

COMMONWEALTH OF PENNSYLVANIA,
County of Allegheny, ss:

Before me, the undersigned, a Notary Public in the County and Commonwealth aforesaid, personally appeared Earl F. Blank, who being by me duly sworn, did depose and say that he is the duly authorized agent with power of attorney for Jones & Laughlin Steel Corporation, Respondent in the within Answer,

and authorized to make this affidavit in its behalf; that the statements of fact set forth in the within Answer are true and correct.

E. F. BLANK.

Jones & Laughlin Building,
Third Avenue & Ross Street, Pittsburgh, Pennsylvania.

Sworn to and subscribed to before me this 24th day of September A. D. 1943.

[SEAL] HOWARD L. SNYDER, *Notary Public.*

My commission expires February 24, 1946.

Before the National Labor Relations Board, Eighth Region

Case No. 8-C-4548

IN THE MATTER OF JONES & LAUGHLIN STEEL CORPORATION, *and* UNITED STEELWORKERS OF AMERICA, CIO

Transcript of testimony

ROOM 702, PUBLIC SQUARE BLDG.,
Cleveland, Ohio, Tuesday, September 28, 1943.

Pursuant to notice, the above-entitled matter came on for hearing at 10 a. m.

Before JOHN H. EADIE, Trial Examiner.

Appearances

John Robert Hill, Esq., for the Board.

James C. Beech, Esq., Jones & Laughlin Building, 3rd Avenue & Ross Street, Pittsburgh, Pennsylvania, for Respondent.

William F. Donovan, Director, and Leo E. Casey, Representative, 804 Chester-Ninth Building, Cleveland, Ohio, for United Steelworkers of America, (CIO).

Trial Examiner EADIE.

* * * * * * *

The Trial Examiner will allow an automatic exception to all adverse rulings, and upon appropriate order an objection and exception will be permitted to stand to an entire line of questioning.

Offers in Evidence

I make this announcement at this time in order that the parties may schedule their time accordingly.

Mr. HILL. Mr. Reporter, will you please mark this as Board's Exhibits 1-A to 1-G, inclusive, for identification?

(Thereupon, the documents above referred to were marked "Board's Exhibits 1-A to 1-G," inclusive, for identification.)

Mr. Hill. Mr. Examiner, I have had marked for identification, "Board's Exhibits 1-A to 1-G," for identification, a series of papers, or I should say documents. These documents consist of:

Board's Exhibit 1-A, a copy of the Board's Rules and Regulations, Series 2 as Amended.

Board's Exhibit 1-B, copy of Amended Charge in the instant case, signed by Leo E. Casey, representative of the United Steelworkers of America (CIO).

Board's Exhibit 1-C, Complaint in the instant case, signed by Walter E. Taag, Regional Director of the Board's Eighth Regional office.

Board's Exhibit 1-D, Notice of Hearing, setting the hearing on the 28th day of September 1943, at 702 Public Square Building, Cleveland, Ohio; where we are presently in session, at 10 o'clock A. M., Eastern Standard Time.

Board's Exhibit 1-E, Affidavit as to Service, indicating service on the Company, both at Cleveland and Pittsburgh, and United Steelworkers of America, (CIO) at Cleveland.

Board's Exhibit 1-F, Copy of Respondent's Answer in the instant case, subscribed and sworn to by E. F. Blank,
59 Director of Personnel Relations, Jones & Laughlin Steel Corporation.

Board's Exhibit 1-G, copies of a telegram sent to all parties hereto, scheduling this hearing to commence at 11 o'clock Eastern War Time, or 10 o'clock A. M. Eastern Standard Time, on which Cleveland now operates, rather than 10 o'clock A. M., Eastern War Time as originally scheduled, and signed by Walter E. Taag, Regional Director of the Board's Eighth Regional office.

I offer Board's Exhibits 1-A to 1-G, inclusive, for identification, in evidence.

Trial Examiner Eadie. Is there any objection?

Mr. Beech. No objection, Mr. Examiner.

Mr. Donovan. No.

Trial Examiner Eadie. It will be received in evidence.

(Whereupon, the documents heretofore marked "Board's Exhibits 1-A to 1-G," inclusive, for identification, were received in evidence.)

Mr. Hill. May I add, Mr. Examiner, that Board's Exhibit 1-A to 1-G, inclusive, is offered in duplicate, and I will point out that Board's Exhibit 1-G in the duplicate consists of four telegrams rather than one, inasmuch as the copy of 1-G draft in the original of Board's Exhibit 1-A to 1-G, inclusive, was telephoned from the telegraph office, in fact, the message was phoned in, and, due to requirements of the War Communications Board, unless there

are at least seven addresses on a telegram, you have to make them out as separate telegrams, so Board's Exhibit 1-G really consists of four parts in the duplicate.

Trial Examiner EADIE. I see.

Stipulation as to facts

Mr. HILL. At this time, if it please the Examiner, I wish to put in the record by stipulation certain facts concerning the operations of the Company.

It is stipulated and agreed by and among all the parties, that Jones & Laughlin Steel Corporation, hereinafter referred to as the Respondent, is a corporation, organized and existing by virtue of the laws of the Commonwealth of Pennsylvania, maintaining its principal office in the City of Pittsburgh, Pennsylvania.

60 Respondent is engaged in the manufacture of semifinished and finished steel products, and it is the fourth largest producer of steel in the United States.

Respondent operates steel mills located at Pittsburgh, Aliquippa, and McKeesport, Pennsylvania.

Respondent is licensed to do business in the state of Ohio, and operates steel mills, known as the Otis Works in the City of Cleveland, Ohio. The Otis Works consists of two plants, known as the Riverside plant, employing approximately 3,200 employees, and the Lakeside plant, employing approximately 1,500 employees. Respondent, with its subsidiary companies, employs approximately 40,000 employees.

During the year 1942, Respondent used coal, limestone, iron ore, and other raw materials at its Ohio and Pennsylvania plants in excess of $50,000,000 in money value, of which approximately 50 percent originated at points outside the states of Ohio and Pennsylvania.

During the year 1942 the value of finished products produced by the Respondent at its Ohio and Pennsylvania plants was in excess of $225,000,000, of which approximately 50 percent was shipped to points outside the states of Ohio and Pennsylvania.

More specifically, dealing with the operations of Respondent at its Otis Works, Respondent used coal, limestone, iron ore and other raw materials at its Otis Works during the year 1942 in excess of $1,000,000; approximately 50 percent of which came from points outside the state of Ohio. During the year 1942, Respondent manufactured approximately 1,000,000 tons of ingot steel as its finished products, in excess of 50 percent of which was shipped to points outside the state of Ohio.

Respondent concedes that it is engaged in commerce within the meaning of Section 2 (6) and (7) of the National Labor Relations Act.

Do you so stipulate, Mr. Beech?

Mr. BEECH. Respondent so stipulates.

Mr. HILL. Do you so stipulate, Mr. Donovan?

Mr. DONOVAN. Yes.

61 Trial Examiner EADIE. This proceeding, I take it, is concerned only with the Otis Works?

Mr. HILL. That is correct.

* * * * * *

(Thereupon, the document above referred to was marked "Board's Exhibit 3," for identification.)

Trial Examiner EADIE. Just a moment, please, Mr. Hill, in the decision and direction of election, the Board finds that all patrolmen, watchmen, and firemen, including dump laborers, but excluding lieutenants, captains, and supervisors, constitute the appropriate unit.

Mr. HILL. That is correct, and that is the unit alleged, Mr. Examiner.

Trial Examiner EADIE. The same you allege in the Complaint?

Mr. HILL. Yes; paragraph 5 of the Complaint, to be the appropriate unit, and to be the unit found by the Board in Case No. R-5143 to be appropriate.

Trial Examiner EADIE. Now, as I understand, at the time of this "R" case, the Company contended that that was not an appropriate unit, and the Board rejected the Company's contention at that time.

Mr. HILL. I think that is a correct statement. Is it not, Mr. Beech?

Mr. BEECH. That is true.

Trial Examiner EADIE. All right.

Mr. HILL. I have had marked for identification as Board's Exhibit 3, a copy of the Certification of representatives in the matter of the Jones & Laughlin Steel Corporation, Otis Works, and United Steelworkers of America (CIO), before the National Labor Relations Board, dated June 5, 1943.

That is offered, in duplicate, Mr. Examiner.

Trial Examiner EADIE. You offer that in evidence?

Mr. HILL. Yes; Board's Exhibit No. 3.

Trial Examiner EADIE. Any objection to it?

Mr. BEECH. No objection.

62 Trial Examiner EADIE. It will be received in evidence as Board's Exhibit 3.

NLRB 257
5-16-42

BEFORE NATIONAL LABOR RELATIONS BOARD

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

NOTICE OF ELECTIO

RIGHTS OF EMPLOYEES

Under Section 7 of the National Labor Relations Act, employees have the right to self organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

PURPOSE OF ELECTION

An election by secret ballot will be conducted under the supervision of the undersigned Regional Director of the National Labor Relations Board among the eligible voters described herein to determine the representative, if any, desired by them for the purpose of collective bargaining with their employer.

SECRET BALLOT

The election will be by SECRET ballot. Voters will be allowed to vote without interference, restraint, or coercion. Electioneering will not be permitted at or near the polling place. Violations of these rules should be reported immediately to the Regional Director or his agent in charge of the election.

ELECTION

ELIGIBLE VOTERS

EMPLOYEES OF
JONES & LAUGHLIN STEEL CORPORATION, OTIS WORKS
CLEVELAND, OHIO

Those eligible to vote are all patrolmen, watchmen, and firemen employed by the Company at its Otis Works during the pay-roll period immediately preceding May 3, 1943, including dump laborers and any such employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding lieutenants, captains, supervisors and any who have since quit or been discharged for cause.

TIME AND PLACE OF ELECTION

DATE:	Wednesday, May 26, 1943	
TIME:	7:00 a.m. to 8:00 a.m. and 3:00 p.m. to 4:00 p.m.	
PLACE:	VOTING PLACE #1:	LAKESIDE PLANT, ROOM 16
	VOTING PLACE #2:	3341 JENNINGS ROAD TRANSPORTATION OFFICE
	VOTING PLACE #3:	315 CLARK AVENUE IN BLAST FURNACE OFFICE

Your attention is called to Section 12 of the National Labor Relations Act:

ANY PERSON WHO SHALL WILLFULLY RESIST, PREVENT, IMPEDE OR INTERFERE WITH ANY MEMBER OF THE BOARD OR ANY OF ITS AGENTS OR AGENCIES IN THE PERFORMANCE OF DUTIES PURSUANT TO THIS ACT SHALL BE PUNISHED BY A FINE OF NOT MORE THAN $5,000 OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BOTH.

An Agent of the Board will hand a ballot to each eligible voter at the voting place. The voter will then mark the ballot in secret in a voting booth and fold it. The voter will then personally deposit the folded ballot in a ballot box under the supervision of an Agent of the Board.

Incorporated herein for your information only is a copy of the official ballot.

AUTHORIZED OBSERVERS

Each of the interested parties may designate an equal number of observers, this number to be determined by the Regional Director or his agent in charge of the election. These observers will have the following duties and privileges:

(a) To act as checkers at the voting place and at the counting of ballots;
(b) To assist in the identification of voters;
(c) To challenge voters and ballots;
(d) To otherwise assist the Regional Director or his agent.

THIS IS THE ONLY OFFICIAL NOTICE OF THIS ELECTION AND MUST NOT BE DEFACED BY ANYONE

United States of America
National Labor Relations Board

OFFICIAL BALLOT

To determine the representative, if any, for purposes of collective bargaining for certain employees of JONES & LAUGHLIN STEEL CORPORATION, OTIS WORKS, Cleveland, Ohio.

1. Mark an X in one square only.
2. Fold your ballot to conceal the X and personally put it in the ballot box.
3. If you spoil your ballot, return it to the Board's Agent and obtain a new one.

MARK AN "X" IN THE SQUARE OF YOUR CHOICE

Do you desire to be represented by UNITED STEELWORKERS OF AMERICA (CIO)?

YES	NO
☐	☐

SAMPLE

THIS IS A SECRET BALLOT AND MUST NOT BE SIGNED

WALTER E. TAAG
REGIONAL DIRECTOR
EIGHTH REGION

(Whereupon, the document heretofore marked "Board's Exhibit 3," for identification, was received in evidence.)

Mr. Hill. Mr. Reporter will you please have this marked as "Board's Exhibit No. 4," for identification?

(Thereupon, the document above referred to was marked "Board's Exhibit No. 4," for identification.)

Mr. Hill. Mr. Examiner, I have had marked for identification, "Board's Exhibit 4," a carbon copy of a letter dated May 28, 1945, addressed to Mr. Earl F. Blank, director of Personnel Relations, Jones & Laughlin Steel Corporation, Pittsburgh, Pennsylvania, signed by William F. Donovan, District Director.

I will ask the Company, the Respondent, and the Union if it may be stipulated that Board's Exhibit 4 for identification is a true and correct copy of the original letter of which Board's Exhibit 4 for identification, purports to be?

Mr. Donovan. It is.

Mr. Hill. And, further, that Board's Exhibit 4 for identification, was written and sent to the Respondent Corporation by William F. Donovan, District Director of District No. 28 on behalf of the United Steelworkers of America, CIO.

Trial Examiner Eadie. Was it received?

Mr. Hill. And that it was received by Respondent Corporation. May it be so stipulated, Mr. Beech?

Mr. Beech. Mr. Examiner, Respondent will stipulate that the proffered copies of letters are duplicates of the original which was received by the Jones & Laughlin Corporation.

Mr. Hill. And may it be stipulated, further, Mr. Beech, that the original of Board's Exhibit 4 for identification was on the letterhead of the United Steelworkers of America, District 28 (CIO)?

Mr. Beech. That is a correct designation; yes.

Mr. Hill. And may it be so stipulated?

Mr. Beech. It did appear on the original of the letter?

Mr. Hill. May it be so stipulated, Mr. Donovan?

Mr. Donovan. Yes.

Mr. Hill. And may it also be stipulated, Mr. Beech, that the letter was sent on behalf of the United Steelworkers of America (CIO)?

Mr. Beech. Yes, it may.

Mr. Hill. And you so stipulate, Mr. Donovan?

Mr. Donovan. We so stipulate.

Mr. Hill. I offer Board's Exhibit No. 4 for identification in evidence.

(Whereupon, the document heretofore marked "Board's Exhibit No. 4," for identification, was received in evidence.)

* * * * * *

Mr. HILL. May it be further stipulated that Board's Exhibit No. 5 was received by the United Steelworkers of America (CIO)?

Mr. DONOVAN. So stipulate.

* * * * * *

(Whereupon, the document heretofore marked "Board's Exhibit No. 5," for identification, was received in evidence.)

Mr. HILL. I have had marked for identification as "Board's Exhibit No. 6," a copy of a letter on the letterhead of the Jones & Laughlin Steel Corporation, to all patrolmen, watchmen, firemen, and dump laborers at the Otis Works of the Jones & Laughlin Steel Corporation, signed by Jones & Laughlin Steel Corporation, dated May 25, 1943.

May it be stipulated, Mr. Beech, that Board's Exhibit No. 6, for identification, is the statement referred to in the second paragraph of Board's Exhibit No. 5, the second sentence of said paragraph, stating: "Proof of this is to be found in the Statement dated May 25, 1943, handed each plant guard at the Otis Works."

64 Mr. BEECH. It may; whether or not it was handed to them or delivered in a letter, I do not know. However, Respondent stipulates it was transmitted to the plant guards.

Trial Examiner EADIE. Board's Exhibit 6 is the statement, it is stipulated that Board's Exhibit 6 is the statement referred to in Board's Exhibit 5?

Mr. BEECH. It is, Mr. Examiner.

Mr. HILL. And counsel for Respondent also stated that he would stipulate that it was transmited to the employees named in the heading of Board's Exhibit 6 for identification.

Trial Examiner EADIE. Yes; is that so stipulated?

Mr. BEECH. Yes, in some manner; yes.

Trial Examiner EADIE. All right.

Mr. HILL. And may it be stipulated that it was transmitted to those said employees on May 25, 1943, the date appearing on Board's Exhibit 6 for identification?

Trial Examiner EADIE. On or about.

Mr. HILL. On or about.

Mr. BEECH. On or about would be more precise.

Trial Examiner EADIE. Is it so stipulated?

Mr. BEECH. Yes.

Mr. HILL. I offer Board's Exhibit No. 6 for identification, in evidence.

Trial Examiner EADIE. Any objection?

Mr BEECH. No objection.

Trial Examiner EADIE. It will be received in evidence as Board's Exhibit No. 6.

(Whereupon, the document heretofore marked "Board's Exhibit No. 6," for identification, was received in evidence.)

Mr. HILL. If it please the Examiner, the Board rests.

Mr. BEECH. Mr. Examiner, I believe Respondent's Answer sets forth pretty well Respondent's position with reference to the case; however, I should like to elaborate a little bit by——

Trial Examiner EADIE. Before you begin, Mr. Beech, I think we will take a five-minute recess; I would like to study your Answer a little further.

65 MR. BEECH. All right.

(Thereupon, a short recess was taken.)

Trial Examiner EADIE. The hearing will come to order.

Mr. BEECH. Mr. Examiner, in order to clarify Respondent's position, I should like to introduce in evidence copies of an exchange of correspondence between Respondent and the agents of the Eighth Regional Office of the National Labor Relations Board.

(To the reporter.) Mark this as "Respondent's Exhibit No. 1," for identification.

* * * * * *

Respondent offers Exhibit 1 in evidence, in duplicate.

Trial Examiner EADIE. In duplicate?

Mr. BEECH. Yes.

Mr. HILL. There is an objection, Mr. Examiner, on the ground of immateriality and irrelevancy. I can see no relevance in this proceeding of the letter to Respondent Corporation informing them of the filing of the charge. I think it may very well be presumed that the Respondent Corporation was informed that charges were filed.

Trial Examiner EADIE. I will overrule the objection.

It will be received in evidence as Respondent's Exhibit 1.

(Whereupon, the document heretofore marked "Respondent's Exhibit 1," for identification, was received in evidence.)

Mr. BEECH (to the reporter). Mark this as "Respondent's Exhibit 2," for identification.

(Thereupon, the document above referred to was marked "Respondent's Exhibit 2," for identification.)

Mr. HILL. I might state, Mr. Examiner, the purpose of my objection was not only to immateriality and irrelevancy, I realize that it comes a little late, but I also want to inquire whether the Respondent is asking the Board to take notice of any particular part of Respondent's Exhibit 1.

Mr. Beech. Mr. Examiner, the particular reference is made to the last paragraph, being an inquiry of the present position of Respondent with respect to bargaining.

66 Respondent's Exhibit 2, marked for identification, is a letter under date of September 4, 1943, addressed to Mr. Louis Plos, Field Examiner, National Labor Relations Board, Eighth Region, Public Square Building, Cleveland, Ohio. Re: Jones & Laughlin Steel Corporation, Otis Works, Case No. 8-C-1548.

* * * * * *

It is offered in evidence in duplicate.

Mr. Hill. Before waiving any objection, Mr. Examiner, I wish to inquire of Respondent's counsel whether Respondent's Exhibit 2, for identification, purports to be a letter in response to Respondent's Exhibit 1? I am compelled to make that inquiry by virtue of the first paragraph in Respondent's Exhibit No. 2, marked for identification, which states that (Reading): "Referring to our telephone conversation of yesterday, representatives of Jones & Laughlin Steel Corporation will be pleased to confer with you in your office concerning the charges filed in the above-named case."

Mr. Beech. Respondent's Exhibit No. 2 is in answer to the letter of the National Labor Relations Board's agent, in addition to reference to the telephone conversation referred to in said letter.

Mr. Hill. But counsel certainly does not maintain that Respondent's Exhibit No. 2 purports to be, on its face, an answer to Respondent's Exhibit No. 1, does it?

Mr. Beech. Reference is made to the telephone conversation, however, the letter carries an answer to Mr. Plost's inquiry of August 14th, which I believe is the date.

Trial Examiner Eadie. Just a moment.

(The Examiner referred to documents.)

Trial Examiner Eadie. Has your question been answered?

Mr. Hill. Yes; and I think the record will show that Respondent's Exhibit 2 for identification refers only to a telephone conversation, and makes no reference to any letter of August 14, 1943, or of any other date.

Trial Examiner Eadie. The exhibit in itself.

Mr. Hill. That is correct; and, also, before waiving any

67 possible objections I may have to the offering in evidence of Respondent's Exhibit 2 for identification, I would like to ask counsel for clarification or an interpretation of the third paragraph of Respondent's Exhibit 2 for identification, to wit: [Reading] "Therefore, we are deferring an answer with respect to bargaining with representatives of units composed of Plant

Guards until such time as a final position of the Corporation has been established."

Therefore, I ask counsel for the Respondent if it is the position of the Respondent that it will now bargain with the United Steelworkers of America, CIO, as exclusive representative of the employees of the unit found appropriate in Case No: R-5143; or does Respondent desire to think it over? Is that the meaning carried in Respondent's Exhibit 2 for identification?

Mr. Beech. Possibly I can clarify that as I go along with the case.

Mr. Hill. The reason I ask that now, Mr. Beech, was to avoid the waiver of any objections I might have to Respondent's Exhibit 2 for identification.

Mr. Beech. Well, Respondent's Exhibit 2 offered is merely put in for a statement of the present position as of September 4, 1943, the date of the letter.

Mr. Hill. Is the present position of Respondent Corporation one of agreeing to bargain with the Union of this date or wanting to think it over until some further and unspecified date?

Mr. Beech. Yes. I might state that Respondent hasn't taken a definite position as of this date.

Trial Examiner Eadie. In other words, it is the Respondent's position as of this date that it is still not ready to say that it is willing to bargain with the Union?

Mr. Beech. It is not prepared to say it will or will not, at this time, Mr. Examiner.

Mr. Hill. In other words, Respondent Corporation desires and will take time to think this matter over.

Mr. Beech. That is true.

68 Trial Examiner Eadie. At any rate, as of today the Respondent is not prepared to say that it will bargain with the Union.

Mr. Beech. That's true.

Mr. Hill. With that answer of counsel for the Respondent I have no objection to the offer in evidence.

Trial Examiner Eadie. It will be received as Respondent's Exhibit No. 2.

(Whereupon, the document heretofore marked "Respondent's Exhibit 2," for identification, was received in evidence.)

* * * * *

Mr. Beech. Respondent's Exhibits 3-A, 3-B, and 3-C, marked for identification, are copies of letters addressed to the Chairman and Board Members of the National Labor Relations Board, the letter being as follows:

Mr. Hill. There is an objection, Mr. Examiner, if the contents of this letter are in reference to any other case, even though it involves the Respondent Corporation, other than the instant case.

Trial Examiner Eadie. What is your position on it, Mr. Beech?

Mr. Beech. It is being introduced to clarify Respondent's present position in respect to bargaining with units composed of Plant Guards and are copies of letters addressed to the National Labor Relations Board that I should like to introduce in evidence.

Mr. Hill. I submit, Mr. Examiner, that the Respondent's position in regard to any other unit, or any other similar unit in any other plant of the Respondent Corporation, has no materiality or relevancy or bearing whatsoever on the issues of this case. Either the Respondent Corporation has bargained or has refused to bargain.

Trial Examiner Eadie. Without commenting on that, I will overrule the objection and permit Mr. Beech to read it into the record.

* * * * * * *

69 Respondent's Exhibits 3-A, 3-B, and 3-C, are copies of letters addressed to individual Board members.

Mr. Hill. Are they identical to the copy which you just read, Mr. Beech?

Mr. Beech. Yes. 3-B and 3-C being different addresses.

Trial Examiner Eadie. Is that offered in evidence?

Mr. Beech. I offer them in evidence, Mr. Examiner.

Mr. Hill. The same objection that I previously made, Mr. Examiner, to the offer of the Respondent's Exhibits 3-A to 3-C, inclusive. I object to the offer in evidence of the Respondent's Exhibits 3-A, 3-B, and 3-C, for identification on the grounds that the Respondent's position in any other litigation other than the instant case can have no possible materiality or relevancy in this proceeding.

Mr. Beech. It certainly is relevant with respect to Respondent's position, Mr. Examiner. We should like to introduce it for that purpose.

Trial Examiner Eadie. It is relevant to Respondent's position. However, I do more or less agree with Mr. Hill that it is not material; at least in my opinion it doesn't seem material in this case.

However, I will overrule the objection and receive them in evidence as Respondent's Exhibits 3-A, 3-B, and 3-C.

* * * * * * *

Mr. BEECH. Respondent's Exhibit No. 4, marked for identification, is a copy of a letter received by Respondent from John E. Lawyer, Chief, Order Section, National Labor Relations Board, Washington, D. C. [Reading:]

* * * * * * *

I offer that in evidence.

Trial Examiner EADIE. Is there any objection?

Mr. HILL. Yes; there is an objection on the ground that what position the Board takes on any disposition of Respondent's request for oral argument in some other cases has no more relevancy here than whether Chicago is the second largest city in the United States or is the third largest city.

70 Trial Examiner EADIE. I will make the same ruling. I will overrule the objection and receive it in evidence.

* * * * * * *

Mr. BEECH. Respondent rests.

Mr. HILL. The Board has no rebuttal evidence, Mr. Examiner.

Trial Examiner EADIE. Has the Union anything in addition?

Mr. DONOVAN. No.

Trial Examiner EADIE. Does anybody wish to make any oral argument? Mr. Beech?

Mr. BEECH. No.

Trial Examiner EADIE. Mr. Donovan?

Mr. DONOVAN. No.

Trial Examiner EADIE. Mr. Hill?

Mr. HILL. No, Mr. Examiner.

Trial Examiner EADIE. Do any of the parties wish to submit briefs?

Mr. BEECH. We will reserve that right.

Trial Examiner EADIE. If you do wish to submit a brief you must have it in in five days from today, if the hearing closes today.

Mr. CASEY. Is it possible for us to submit a brief?

Trial Examiner EADIE. You must have it in in five days.

Mr. CASEY. We have no intention at the present time of submitting one.

Mr. DONOVAN. No, we have not. We have submitted enough now, to hang them, see?

Trial Examiner EADIE. If there is no further evidence, the hearing is closed.

* * * * * * *

71 *Board's Exhibit No. 2*

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. R 5143

IN THE MATTER OF JONES AND LAUGHLIN STEEL CORP., OTIS WORKS, *and* UNITED STEELWORKERS OF AMERICA (CIO)

Mr. Earl F. Blank, of Pittsburgh, Pa., and Mr. F. W. Mumper, of Cleveland, Ohio, for the Company.
Mr. William F. Donovan, of Cleveland, Ohio, for the Union.
Mr. David V. Easton, of counsel to the Board.

DECISION AND DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by United Steelworkers of America (CIO), herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Jones & Laughlin Steel Corporation, Otis Works, Cleveland, Ohio, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Louis Plost, Trial Examiner. Said hearing was held at Cleveland, Ohio, on April 8, 1943. The Company and the Union appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Company made a motion to dismiss the petition on the ground that a unit of guards is not appropriate. The Trial Examiner referred this motion to the Board. For reasons appearing below this motion is denied. The Trial
72 Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Company submitted a statement by an official of the Bethlehem Steel Corporation to the House Military Affairs Committee which has been considered by the Board in lieu of a brief.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

1. THE BUSINESS OF THE COMPANY

Jones & Laughlin Steel Corporation, a Pennsylvania corporation licensed to do business in Ohio, operates plants in Cleveland, Ohio, known as the Otis Works, with which we are concerned herein. The Company is engaged in the manufacture of steel and

steel products in various forms. During the year 1942 the raw materials used by the Company and the finished products manufactured by the Company amounted in each instance to more than $1,000,000. In excess of 50 percent of the raw materials and finished products came to the Company and were shipped and sold by the Company from and to points outside the State of Ohio. The Company is engaged in production for the national war effort and admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

United Steelworkers of America is a labor organization affiliated with the Congress of Industrial Organizations admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On February 17, 1943, the Union requested recognition as a bargaining representative of its plant-protection employees. The Company refused to recognize the Union unless it was certified by the Board.

A statement of the Field Examiner, introduced into evidence at the hearing, indicates that the Union represents
73 a substantial number of employees in the unit hereinafter found appropriate.[1]

We find that a question affecting commerce has arisen concerning the representation of employees of the Company within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

The Union contends that all patrolmen, watchmen, and firemen, including dump laborers[2] but excluding lieutenants, captains and supervisors employed at the Otis Works constitute a unit appropriate for the purposes of collective bargaining. The Company maintains that such employees are not an appropriate unit, claiming that these employees should not be permitted to choose a collective bargaining agent since they are either sworn members of the auxiliary military police or under its control. However, the record discloses that although the employees in the proposed unit take the Army oath, they are under the control of the Company as to pay, conditions of employment, and benefits. We have frequently

[1] The Field Examiner reported that the Union submitted 37 designation cards bearing apparently genuine original signatures, of which 34 contained names appearing upon the Company's pay roll of March 2, 1943. This pay roll contained 62 names within the appropriate unit.

[2] The dump laborers as well as the other classifications sought by the Union perform plant protection work.

found that plant guards hired and paid by private employers, are employees within the meaning of the Act, and may designate a representative for the purposes of collective bargaining, even though they are members of the auxiliary military police.[3] Accordingly, the Company's contention is rejected.

The Union already represents all production and maintenance employees of the Company under a contract dated December 2, 1942, and the employees in the unit proposed herein are specifically excluded from the benefits of the above-mentioned contract. However, the Union does not intend to merge the plant-protection employees with the unit for which it has already been recognized as the exclusive bargaining agent, but intends to bargain for them as a separate unit. We have, on several occasions heretofore, permitted the same labor organization to bargain for the production and maintenance employees and the plant-protection employees in separate units.[4]

Accordingly we find that all patrolmen, watchmen, and firemen, including dump laborers employed by the Company at its Otis Works, but excluding lieutenants, captains, and supervisors, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.[5]

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the appropriate unit who were employed during the payroll period immediately preceding the date of our Direction of Election, subject to the limitations and additions set forth therein.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 2, as amended, it is hereby

[3] Matter of Westinghouse Air Brake Company and United Electrical, Radio & Machine Workers of America, Local No. 610, 42 N. L. R. B. 525; Matter of Chrysler Corporation, Highland Park Plant and Local 114, United Automobile, Aircraft, and Agricultural Implement Workers of America, affiliated with the C. I. O., 44 N. L. R. B. 881; Curtiss-Wright Corporation and American Federation of Labor, 45 N. L. R. B. No. 86; William J. Burns Detective Agency and American Federation of Labor, 47 N. L. R. B., No. 81.

[4] Matter of Phelps Dodge Copper Products Corp. and United Electrical, Radio & Machine Workers of America, Local No. 441, affiliated with the Congress of Industrial Organizations, 41 N. L. R. B. 973; Chrysler Corporation, Highland Park Plant and Local 114, United Automobile, Aircraft, and Agricultural Implement Workers of America, affiliated with the C. I. O., 44 N. L. R. B. 881.

[5] Matter of Chrysler Corporation, Highland Park Plant and Local 114, United Automobile, Aircraft, and Agricultural Implement Workers of America, affiliated with the C. I. O., supra.

Directed that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Jones
75 & Laughlin Steel Corporation, Otis Works, Cleveland, Ohio, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Eighth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 10, of said Rules and Regulations, among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including any such employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding any who have since quit or been discharged for cause, to determine whether or not they desire to be represented by United Steelworkers of America, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.

Signed at Washington, D. C., this 3rd day of May 1943.

[SEAL]

HARRY A. MILLIS,
Chairman,
GERARD D. REILLY,
Member,
JOHN M. HOUSTON,
Member,
National Labor Relations Board.

76 *Board's Exhibit No. 4*

Copy to Leo Casey.

MAY 28, 1943.

Mr. EARL F. BLANK,
Director of Personnel Relations,
Jones & Laughlin Steel Corporation, Pittsburgh, Pa.

DEAR MR. BLANK: Now that we have won a National Labor Relations Board election of guards at your Otis Division, and have been certified as bargaining agency for that group, it is my desire that we begin negotiations for a contract at the earliest possible time.

I shall appreciate hearing from you, giving us a date when a meeting can be arranged to start such negotiations.

Hoping that the meeting may be held at an early date, and with best wishes, I am

Very truly yours,

(S) WILLIAM F. DONOVAN,
District Director.

WFD/b.

Copy to Mr. Frank Kovarik, President, Local Union 2915, Cleveland, Ohio.

77 *Board's Exhibit No. 5*

JONES & LAUGHLIN STEEL CORPORATION

(Letterhead)

JUNE 23, 1943.

MR. WILLIAM F. DONOVAN,
District Director, United Steelworkers of America,
District No. 28,
803-804 Chester-Ninth Building, Cleveland, Ohio.

DEAR MR. DONOVAN: We have your letter of May 28, 1943, requesting that we meet with you, as soon as possible, to commence collective bargaining on behalf of the plant guards at the Otis Works.

As you are well aware, the Corporation objected and still objects to the appropriateness of plant guards as a bargaining unit. Proof of this is to be found in the Statement, dated May 25, 1943, handed each plant guard at the Otis Works. As set forth in that Statement, it is our intention to use every legal means available to us to have plant guards classified with Supervisors in respect to collective bargaining. In accordance with this policy we are obliged to decline your request that we bargain with you on behalf of plant guards.

Very truly yours,

JONES & LAUGHLIN STEEL CORPORATION,
By E. F. BLANK,
Director of Personnel Relations.

WHH:AKK.

78 *Board's Exhibit No. 6*

JONES & LAUGHLIN STEEL CORPORATION

To All Patrolmen, Watchmen, Firemen, and Dump Laborers at the Otis Works of Jones & Laughlin Steel Corporation:

The National Labor Relations Board has directed that an election be conducted to determine whether you men, having the duties of plant guard, desire the United Steelworkers of America to be your exclusive collective bargaining agent.

Jones & Laughlin Steel Corporation has consistently maintained that supervisors and plant guards should not be included in bargaining units because both groups represent management in safeguarding the Corporation's property and maintaining order and discipline among its employees.

Because our plant guards, like our supervisors, have been regarded as members of the management's staff, they have been expressly excluded from all our union agreements. Plant guards, as an arm of management, have always been maintained as an effective, responsible, and efficient organization. The responsibilities of plant guard to management are essentially the same as peace officers' duties to the Governor of a State or the Mayor of a City. Management could no more operate efficiently without plant guards responsible solely to it than public officials could operate without their sworn peace officers.

Since ordering the election, in this case, the National Labor Relations Board has ruled that supervisory employes cannot be a bargaining group. It is our intention to use every legal means available to us to secure a similar decision with respect to our plant guards.

In your present capacity as a plant guard, your duties and responsibilities are substantially different from those production and maintenance employes who are covered by the 1942 Agreement between the Jones & Laughlin Steel Corporation and the United Steelworkers of America.

79 Any plant guard who does not wish to continue as a part of management, who believes his interests require representation, and feels that he is more a part of the production and maintenance group than the management staff, will, upon request, be transferred to an equivalent production or maintenance occupation.

JONES & LAUGHLIN STEEL CORPORATION.

CLEVELAND, OHIO, *May 25, 1943.*

Respondent's Exhibit No. 1

[Copy]

NATIONAL LABOR RELATIONS BOARD

8TH REGION

PUBLIC SQUARE BUILDING,
Cleveland, Ohio, August 14, 1943.

JONES & LAUGHLIN STEEL CORPORATION,
Otis Works, Pittsburgh, Pa.
Attn: Mr. E. F. Blank, Director of Personnel Relations

Re: Jones & Laughlin Steel Corporation, Otis Works Case No. 8-C-1548

GENTLEMEN: This will advise you that on August 13, 1943, a charge was filed in the above-entitled case.

The charge alleges, in substance, that the Company has committed violations of Section 8, subsections (1) and (5) of the National Labor Relations Act, by interfering with, restraining, and coercing its employees in their exercise of the rights guaran-
80 teed in Section 7 of the Act, and by refusing to bargain with the United Steelworkers of America (CIO) as representatives of all patrolmen, watchmen, and firemen despite the fact that the above-mentioned Union was certified by the National Labor Relations Board on June 5, 1943 as the sole representative of such employees.

This case has been assigned to me for investigation.

The Union has submitted to me a letter under date of June 23, signed by your Company. You state, in substance, that you consider a unit of guards inappropriate and you, therefore, decline to bargain with the certified Union for such class of employees.

Will you please let me know if this is the definite position taken by the Company in this matter. I trust you will give this matter your very prompt attention.

Respectfully yours,

(S) LOUIS PLOST,
Field Examiner.

Respondent's Exhibit No. 2

JONES & LAUGHLIN STEEL CORPORATION

(Letterhead)

SEPTEMBER 4, 1943.

MR. LOUIS PLOST,
Field Examiner, National Labor Relations Board,
Eighth Region, Public Square Building,
Cleveland, Ohio.

Re: Jones & Laughlin Steel Corporation Otis Works
Case No. VIII C-1548

DEAR SIR: Referring to our telephone conversation of yesterday, representatives of Jones & Laughlin Steel Corporation
81 will be pleased to confer with you in your office concerning the charges filed, in the above named case.

Recently, we have had a National Labor Relations Board hearing in a case involving Plant Guards at the Pittsburgh Works of the Corporation and are awaiting a decision in that case.

Therefore, we are deferring an answer with respect to bargaining with representatives of units composed of Plant Guards until such time as a final position of the Corporation has been established.

Yours very truly,

JONES & LAUGHLIN STEEL CORPORATION,
Director of Personnel Relations.

JCB:ade.

Respondent's Exhibit No. 3-A

JONES & LAUGHLIN STEEL CORPORATION
(Letterhead)

SEPTEMBER, 7, 1943.

HON. H. A. MILLIS,
Chairman National Labor Relations Board,
Shoreham Building, Washington, D. C.

SIR: On August 31, 1943, the National Labor Relations Board upon petition of the United Steelworkers of America held a hearing in Pittsburgh, Pennsylvania, involving Plant Guards of the Pittsburgh Works of Jones & Laughlin Steel Corporation.

82 The Corporation moved to dismiss the Petition because the Petitioner is the same labor organization that represents production and maintenance employes in all of its steel plants, including the Pittsburgh Works, and in the 1942 Agreement between the Corporation and the Union, now in force, watchmen or guards are specifically excluded, together with foremen, salaried employes and nurses.

Plant Guards of the Pittsburgh Works of Jones & Laughlin Steel Corporation are engaged in protecting a $200,000,000 steel plant engaged in 100% war production. The operation of this plant is just as vital as the production of navy planes at the Johnsville Plant of Brewster Aeronautical Corporation, where a recent work stoppage occurred, occasioned by plant guards holding their union rights paramount to allegiance to the U. S. Coast Guard Reserve, and subsequent support by their fellow union production workers in the same union. It is conceivable that a similar situation might arise in the Pittsburgh Works of the Corporation.

The Corporation has given serious consideration to testing the appropriateness of a unit composed of Plant Guards in the U. S. Circuit Court of Appeals. However, corporate officials feel that they would like to have the benefit of oral argument before the Board and some discussion with Board members themselves prior to making a definite decision with regard to bargaining with certified representatives of Plant Guards.

Therefore, will you please consider this as a request for oral hearing before the Board and a further request that you as an individual Board member, grant representatives of the Corporation opportunity for discussion with you.

Respectfully yours,

JONES & LAUGHLIN STEEL CORPORATION,
Director of Personnel Relations.

JCB:ade.

83 *Respondent's Exhibit No. 4*

[Copy]

NATIONAL LABOR RELATIONS BOARD

WASHINGTON, D. C.

H. A. Millis, Chairman, Gerard D. Reilly, John M. Houston.

SEPTEMBER 11, 1943.

MR. EARL F. BLANK,
Director of Personnel Relations,
Jones & Laughlin Steel Corp., Pittsburgh, Pennsylvania.

Re: Jones & Laughlin Steel Corp., Case No. 6-R-770

DEAR MR. BLANK: This will acknowledge receipt of your letter of September 7, addressed to Dr. Millis.

Your request for permission to present oral argument has been referred to the Board for consideration. You will be advised of the action taken at a later date.

Very truly yours,

(S) JOHN E. LAWYER,
Chief, Order Section.

84 Before National Labor Relations Board

Intermediate report

Dated October 5, 1943

Mr. John Robert Hill, for the Board.
Mr. James C. Beech, of Pittsburgh, Pa., for the respondent.
Mr. William F. Donovan and Mr. Leo F. Casey, of Cleveland, Ohio, for the Union.

STATEMENT OF THE CASE

Upon a first amended charge duly filed on September 11, 1943; by United Steelworkers of America (CIO), herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Eighth Region (Cleveland, Ohio), issued its complaint, dated September 16, 1943, against Jones & Laughlin Steel Corporation, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

Copies of the complaint accompanied by notice of hearing were duly served upon the respondent and the Union.

With respect to the unfair labor practices the complaint alleged in substance: (1) that on May 3, 1943, the Board in its Decision and Direction of Election in Case No. R-5143[1] found that all patrolmen, watchmen, and firemen, including dump laborers, employed by the respondent at its Otis Works, Cleveland, Ohio, but excluding lieutenants, captains, and supervisors, constituted a unit appropriate for collective bargaining; (2) that a majority of the employees in the aforesaid appropriate unit designated and selected the Union as their representative for the purposes of collective bargaining at an election conducted by the Board on May 26, 1943; (3) that on June 5, 1943, the Board certified the Union as the exclusive representative of all employees in said unit for the purposes of collective bargaining; (4)
85 that the Union at all times since said certification has been, and continues to be, the exclusive representative of all employees in said appropriate unit; (5) that on or about May 28, 1943, and at all times thereafter, the Union requested the respondent to bargain collectively; (6) that the respondent since on or about June 23, 1943, and at all times thereafter has failed and refused to bargain with the Union; and (7) that by such refusal, the respondent interfered with, restrained, and coerced its employees in the rights guaranteed in Section 7 of the Act.

On or about September 24, 1943, the respondent filed an answer, admitting certain allegations of the complaint as to its business, and as to certain proceedings of the Board leading to the certification of the Union. In its answer, however, the respondent denied the commission of the alleged unfair labor practices, denied the appropriateness of the unit as found by the Board in Case No. R-5143, and denied that it has failed and refused to bargain with the Union, stating that its refusal to bargain was "qualified and conditional."

Pursuant to notice, a hearing was held on September 28, 1943, at Cleveland, Ohio, before the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel, and the Union by its representatives. All parties participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. Although afforded an opportunity to do so, none of the parties argued orally before the undersigned or filed briefs with him.

[1] Matter of Jones & Laughlin Corporation and United Steelworkers of America (CIO).

Upon the entire record in the case, the undersigned makes the following:

Findings of fact

I. THE BUSINESS OF THE RESPONDENT

Jones & Laughlin Steel Corporation is a Pennsylvania corporation engaged in the manufacture of iron and steel products. It operates steel mills in Pittsburgh, Aliquippa, and McKeesport, Pennsylvania, and Cleveland, Ohio. The instant case is
86 concerned only with the steel mills located at Cleveland, Ohio, known as the Otis Works. The Otis Works consist of two plants, known as the Riverside plant, employing approximately 3,200 employees, and the Lakeside plant, employing approximately 1,5000 employees.

With respect to the operations of the Otis Works, the respondent, during the year 1942, used coal, limestone, iron ore, and other raw materials with a value in excess of $1,000,000, approximately 50 percent of which came from points outside the State of Ohio. During the year 1942, the respondent manufactured at the Otis Works approximately 1,000,000 tons of ingot steel, in excess of 50 percent of which was shipped to points outside the State of Ohio.

At the hearing, the respondent admitted that it is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

II. THE ORGANIZATION INVOLVED

United Steelworkers of America (CIO) is a labor organization which admits to membership employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

The refusal to bargain

1. The appropriate unit and representation by the Union of a majority therein

On May 3, 1943, the Board issued a Decision and Direction of Election (Case No. R-5143) finding, among other things, that all patrolmen, watchmen, and firemen, including dump laborers, employed by the respondent at its Otis Works, but excluding lieutenants, captains, and supervisors, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

On May 26, 1943, an election was held pursuant to said Direction of Election. On June 5, 1943, the Board certified the Union as the representative of the employees in the unit heretofore mentioned for the purposes of collective bargaining.

At the hearing the respondent did not question the fact
87 that the Board had certified the Union as the representative of its employees, but contested the appropriateness of the unit and the subsequent certification of the Union. The respondent did not adduce any evidence on the question of the appropriateness of the unit, or to rebut the presumption arising from the Board's certification that the Union is still the representative of the majority of the employees of the respondent in the appropriate unit.[2]

The undersigned finds, in accordance with the Board's previous determination, that all patrolmen, watchmen, and firemen, including dump laborers, employed by the respondent at its Otis Works, but excluding lieutenants, captains and supervisors, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act. The undersigned further finds that on and at all times after June 5, 1943, the Union was the duly designated bargaining representative of a majority of the employees in the aforesaid appropriate unit, and that, pursuant to the provision of Section 9 (a) of the Act, the Union was on June 5, 1943, and at all times thereafter has been and is now the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

2. The refusal to bargain

In a letter dated May 28, 1943, the Union requested respondent to bargain collectively with it as the exclusive representative of the employees in the unit. On June 23, 1943, the respondent sent the Union the following letter:[3]

"We have your letter of May 28, 1943, requesting that we meet with you, as soon as possible, to commence collective bargaining on behalf of the plant guards at the Otis Works.

"As you are well aware, the Corporation objected and
88 still objects to the appropriateness of plant guards as a bargaining unit. Proof of this is to be found in the Statement, dated May 25, 1943, handed each plant guard at the Otis Works. As set forth in that Statement, it is our intention to use every legal means available to us to have plant guards classified with Supervisors in respect to collective bargaining. In accordance with this policy we are obliged to decline your request that we bargain with you on behalf of plant guards."

[2] None of the parties produced witnesses at the hearing and the evidence consists wholly of exhibits, stipulations and admissions of counsel.
[3] As noted above, the Board's certification is dated June 5, 1943.

An agent for the Board, by letter dated August 14, 1943, referred to the respondent's refusal to bargain with the Union as set forth in respondent's letter of June 23, 1943, and inquired if this was the "definite position taken by the Company." On September 4, 1943, the respondent sent the Board agent the following letter:

"Referring to our telephone conversation of yesterday, representatives of Jones & Laughlin Steel Corporation will be pleased to confer with you in your office concerning the charges filed, in the above named case.

"Recently, we have had a National Labor Relations Board hearing in a case involving Plant Guards at the Pittsburgh Works of the Corporation and are awaiting a decision in that case.

"Therefore, we are deferring an answer with respect to bargaining with representatives of units composed of Plant Guards until such time as a final position of the Corporation has been established."

During the hearing, the respondent's counsel made the following statements concerning the respondent's position on its willingness to bargain with the Union:

Mr. HILL. Is the present position of Respondent Corporation one of agreeing to bargain with the Union of this date or wanting to think it over until some further and unspecified date?

Mr. BEECH. Yes. I might state that Respondent hasn't taken a definite position as of this date.

89 Trial Examiner EADIE. In other words, it is the Respondent's position as of this date that it is still not ready to say that it is willing to bargain with the Union?

Mr. BEECH. It is not prepared to say it will or will not, at this time, Mr. Examiner.

Mr. HILL. In other words, Respondent Corporation desires and will take time to think this matter over.

Mr. BEECH. That is true.

Trial Examiner EADIE. At any rate, as of today the Respondent is not prepared to say that it will bargain with the Union.

Mr. BEECH. That's true.

The undersigned finds that the respondent on June 23, 1943, and at all times thereafter, has refused to bargain collectively with the Union as the exclusive representative of its employees in the appropriate unit, and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.[1]

[1] The respondent contends that its refusal to bargain is "qualified and conditional and not final and conclusive." This contention is based on respondent's claim of the inappropriateness of the unit as found by the Board and, further, on the fact that the respondent was awaiting a decision in a case before the Board involving "Plant Guards at the Pittsburgh Works." (Referred to in respondent's letter dated September 4, 1943, to the Board's agent, as noted above.) The undersigned does not find any merit in the respondent's contention in this connection.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce, among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Since it has been found that the respondent has engaged in unfair labor practices, it will be recommended that it
90 cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Since it has been found that the respondent has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, it will be recommended that the respondent, upon request, bargain collectively with the Union.

Upon the basis of the above findings of fact and upon the entire record in the case, the undersigned makes the following:

Conclusions of law

1. United Steelworkers of America (CIO) is a labor organization, within the meaning of Section 2 (5) of the Act.

2. All patrolmen, watchmen, and firemen, including dump laborers, employed by the respondent at its Otis Works, Cleveland, Ohio, but excluding lieutenants, captains and supervisors, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

3. United Steelworkers of America (CIO) was on June 5, 1943, and at all times thereafter, has been the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

4. By refusing on June 23, 1943, and at all times thereafter, to bargain collectively with the United Steelworkers of America (CIO), as the exclusive representative of all its employees in the aforesaid appropriate unit, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

5. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor
91 practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in the case, the undersigned recommends that the respondent, Jones & Laughlin Steel Corporation, and its officers, agents, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with United Steelworkers of America (CIO) as the exclusive representative of all its employees employed as patrolmen, watchmen, and firemen, including dump laborers, employed by the respondent at its Otis works, but excluding lieutenants, captains and supervisors;

(b) Engaging in any like or related act or conduct interfering with, restraining, or coercing its employees in the exercise of the rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with United Steelworkers of America (CIO) as the exclusive representative of all of its employees in the aforesaid appropriate unit;

(b) Post immediately in conspicuous places at its Otis Works plants in Cleveland, Ohio, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraph 1 (a) and (b) of these recommendations, and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of these recommendations;

92 (c) Notify the Regional Director for the Eighth Region in writing, within ten (10) days from the date of the receipt of this Intermediate Report, what steps the respondent has taken to comply herewith.

It is further recommended that unless on or before ten (10) days from the receipt of this Intermediate Report, the respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 2—as amended, effective October 28, 1943—any party may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceedings (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. As further provided in said Section 33 should any party desire permission to argue orally before the Board, request therefore must be made in writing to the Board within ten (10) days from the date of the order transferring the case to the Board.

Dated October 5, 1943.

JOHN H. EADIE, *Trial Examiner.*

93 Before National Labor Relations Board

Exceptions and objections to intermediate report filed on behalf of Jones & Laughlin Steel Corporation

Dated November 4, 1943

Jones & Laughlin Steel Corporation (hereinafter referred to as the respondent) by its representative, W. H. Harvey, files this, its bill of exceptions and objections to the Intermediate Report of John H. Eadie (sometimes hereinafter referred to as the Examiner), said Intermediate Report having been served upon respondent on October 11, 1943. Respondent excepts and objects to the findings of fact, conclusions of law, the remedy and recommendations as follows:

1. Respondent excepts to that portion of the Intermediate Report that would require respondent to cease and desist from:

"1. (a) Refusing to bargain collectively with United Steelworkers of America (CIO) as the exclusive representative of all its employees employed as patrolmen, watchmen, and firemen, including dump laborers, employed by the respondent at its Otis Works, but excluding lieutenants, captains, and supervisors."

take the following affirmative action

"2. (a) Upon request, bargain collectively with United Steelworkers of America (CIO) as the exclusive representative of all of its employees in the aforesaid appropriate unit. * * *"

and that conclusion of law holding that

"2. All patrolmen, watchmen, and firemen, including dump laborers, employed by the respondent at its Otis Works, Cleveland, Ohio, but excluding lieutenants, captains, and supervisors, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act."

National Labor Relations Act—Definitions Section 2. When used in this Act, (2) *The term "employer" includes any person acting in the interest of an employer, directly or indirectly*[1] but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

94

Inasmuch as a corporation can act only through individuals, all of whom are employes of the corporation, such employes acting in that capacity are deemed to be within Section 2 (2) of the Act. The plant guards at the Otis Works of the Corporation represent management by enforcing the rules and regulations of the Corporation, protecting corporate property, and making confidential investigations for the Corporation and various governmental agencies. Hence, any construction of the Act that would make a finding that plant guards are employees within the meaning of Section 2 (3) of the Act, would in effect deprive management of a class of those employees who can and do properly act in the interest of the employer.

Plant guards do not constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act for the reasons that they are not employees within the meaning of Section 2 (3) of the Act and such a finding does not effectuate the policies of the Act. Rather, the conclusion of law hampers the purposes of the Act and has a tendency to defeat true and bona fide collective bargaining. Plant guards, who are civilian auxiliaries to the military police, are confronted with mixed questions of duty, allegiance and responsibility to the U. S. Government, employer and labor organization. In the matter of The Maryland Drydock Company and Local No. 31 of the Industrial Union of Marine and Shipbuilding Workers of America, Cases No. R–5212 and 5214, the Board held that supervisory employers do not constitute a unit appropriate for the purposes of collective bargaining saying * * * "The provisions of Section 9 (b) which render it incumbent upon the Board to consider

[1] Italics supplied.

whether the unit alleged to be appropriate in each case
95 will insure to employees the full benefit of their right to self-organization and to collective bargaining and *otherwise effectuate the policies of the Act* [italics supplied]. In making this determination it is relevant for us to inquire into the status in the managerial hierarchy of the personnel claiming to be an appropriate unit." It is submitted that plant protection employees like supervisory employees exercise a degree of control and supervision over production workers in that they have supervision with respect to policing such personnel and enforcing the Corporation rules and regulations as well as the General Orders imposed by the U. S. Army on War Production Plants and personnel. Although the authority inherent in the plant guards does not extend to the power of hiring and discharging production and maintenance employees, the dominant factor of control over such personnel, i. e., enforcing Corporation's rules and regulations with respect to conduct of employees and protection of plant property is supervision akin to that exerted by foremen and lesser supervisory employees, in that, within the limits of their authority, their recommendations with respect to hiring and firing are given the same serious consideration as the recommendations of supervisors. Plant guards like supervisors of the Corporation have always been regarded as members of Management's Staff and have been expressly excluded from labor agreements negotiated between the Corporation and various labor organizations. The responsibilities of plant guard to Management are essentially the same as peace officers' duties to the governor of a state or the mayor of a city. Management can no more operate efficiently without plant guards responsible solely to it than public officials can function without their sworn peace officers. The conclusion of law holding that plant guards constitute an appropriate unit within the meaning of Section 9 (b) exceeds the administrative discretion of the Board.

2. Respondent excepts to that portion of the Intermediate Report that would require respondent to cease and desist from

96 "1. (b) Engaging in any like or related act or conduct interferring with, restraining, or coercing its employees in the exercise of the rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act."

and that conclusion of law holding that respondent

"5. By interferring with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act."

The conclusion of law and proposed Board Order recommended by the Examiner are not supported by any evidence in the record or any finding of fact upon which to base such a conclusion and recommendation. Respondent challenges Board or Union to submit any instance wherein any representative of the Corporation has singly or collectively interferred with plant guards or been guilty of the type coercion practiced by Union to secure members.

3. Respondent excepts to that conclusion of law made by the Examiner as follows:

"3. United Steelworkers of America (CIO) was on June 5, 1943, and at all times thereafter, has been the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act."

The Board exceeded its powers and erred in finding that a question affecting commerce had arisen concerning employees under Section 9 (c) of the Act and proceeded to make an illegal, arbitrary and capricious determination of an alleged appropriate unit under Section 9 (b) of the Act. Therefore, the representatives so certified pursuant to Section 9 (a) are representatives of employes in an inappropriate unit and said certification has
97 no legal force and effect under the Act. The Examiner's conclusion of law is based wholly thereon.

4. Respondent excepts to that conclusion of law made by the Examiner

"4. By refusing on June 23, 1943, and at all times thereafter, to bargain collectively with the United Steelworkers of America (CIO) as the exclusive representative of all its employees in the aforesaid appropriate unit, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act."

The Examiner predicates his conclusion of law upon a finding of fact that respondent has refused to bargain with representatives of employees in an alleged appropriate unit; inasmuch as said finding is based upon the Board's prior erroneous determination of an inappropriate unit, respondent's refusal to bargain is not an unfair labor practice within the meaning of Section 8 (5) of the Act.

5. Respondent excepts to that recommendation of the Examiner that would require respondent to

"2. (b) Post immediately in conspicuous places at its Otis Works plants in Cleveland, Ohio, and maintain for a period of at least sixty (60) consecutive days, from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraph 1 (a) and (b) of these recommendations, and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of these recommendations."

The recommendation and proposed order are unjustified and beyond lawful power of the Board. The recommended posting of the aforesaid notices is not within the spirit or letter of the Act and would in nowise effectuate the policies of the Act. The aforesaid recommendation, if posted as ordered, would serve only to create confusion and discord among production workers
98 who are not involved in this issue. Same also signifies to us the lack of knowledge and bias on part of Examiner in that any fair person would, at most, recommend posting only in places where it is the habit, custom or requirement of plant guards to gather.

6. Respondent excepts to the conclusion of law made by the Examiner holding that

"6. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act."

The conclusion of law made by the Examiner is not supported by any evidence in the record or finding of fact to substantiate such a conclusion.

CONCLUSION

For the reasons hereinbefore set forth respondent

(1) Moves that the complaint and first amended charge be dismissed and

(2) Petitions the Board to issue an order revoking the certification of representatives made in Case No. R-5143.

Respectfully submitted.

JONES & LAUGHLIN STEEL CORPORATION.
By W. H. HARVEY.

Dated November 4, 1943.

99 Before National Labor Relations Board

Decision and order

Signed December 2, 1943

On October 5, 1943, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the respondent filed exceptions and objections to the Intermediate Report. The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the respondent's exceptions and objections, and the entire record in the case, and hereby adopts the findings, conclusions and recommendations made by the Trial Examiner, with the additions noted below.

In its exceptions to the Intermediate Report, the respondent reiterates its contention that a unit of guards is not appropriate within the meaning of the Act, petitions that the Board's certification of the Union as the collective bargaining representative of the employees in such a unit be revoked, and moves that the complaint accordingly be dismissed. The petition and the motion are hereby denied. The respondent has advanced no argument in support of its contentions which we have not considered and rejected in previous decisions holding that plant-protection employees may constitute appropriate units for collective bargaining under the Act.[1]

The respondent further excepts to the recommendation of the Trial Examiner that it be required to post appropriate notices "in conspicuous places at its Otis Works plants," contending that the posting of such notices should be confined to the guards' quarters. We are in accord with the Trial Examiner's recommendation, and we find that the purposes of the Act will be
100 better effectuated by a general posting of notices, rather than by a posting limited to the guards' quarters.

ORDER

Upon the entire record in the case and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Jones &

[1] See Matter of Budd Wheel Company, 52 N. L. R. B., No. 115, and cases cited therein. Matter of Jones & Laughlin Steel Corporation, 52 N. L. R. B., No. 169.

Laughlin Steel Corporation, Cleveland, Ohio, and its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with United Steelworkers of America (CIO) as the exclusive representative of all patrolmen, watchmen, and firemen, including dump laborers, employed by the respondent at its Otis Works, but excluding lieutenants, captains, and supervisors;

(b) Engaging in any like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with United Steelworkers of America (CIO) as the exclusive representative of all patrolmen, watchmen and firemen, including dump laborers, employed by the respondent at its Otis Works, but excluding lieutenants, captains, and supervisors;

(b) Immediately post in conspicuous places throughout its Otis Works plants in Cleveland, Ohio, including the premises occupied by its patrolmen, watchmen, firemen, and dump laborers, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is
101 ordered to cease and desist in paragraphs 1 (a) and (b) of this Order; and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of this Order;

(c) Notify the Regional Director for the Eighth Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

Signed at Washington, D. C., this 2nd day of December 1943.

[SEAL]

HARRY A. MILLIS,
Chairman,
GERARD D. REILLY,
Member,
JOHN M. HOUSTON,
Member,
National Labor Relations Board.

102 In the United States Circuit Court of Appeals for the Sixth Circuit

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

JONES & LAUGHLIN STEEL CORPORATION, RESPONDENT

Certificate of the National Labor Relations Board

Signed January 28, 1944

The National Labor Relations Board by its Chief of the Order Section, duly authorized by Section 1 of Article VI, Rules and Regulations of the National Labor Relations Board, Series 3, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record in proceedings before said Board entitled, "In the Matter of Jones & Laughlin Steel Corporation and United Steelworkers of America (CIO)," and "In the Matter of Jones & Laughlin Steel Corporation, Otis Works and United Steelworkers of America (CIO)," the same being Cases Nos. 8–C–1548 and R–5143, respectively, before said Board, such transcript including the pleadings, testimony, and evidence upon which the order of the Board in said proceedings was entered, and including the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

R–5143 (8–R–1056)

103 (1) Stenographic transcript of testimony held before Louis Plost, Trial Examiner for the National Labor Relations Board, together with all exhibits introduced into evidence.

(2) Copy of decision and direction of election issued by the National Labor Relations Board May 3, 1943, together with affidavit of service.

(3) Copy of Regional Director's report on ordered election dated May 27, 1943.

(4) Copy of certification of representatives issued by the National Labor Relations Board June 5, 1943, together with affidavit of service.

8–C–1548

(5) Stenographic transcript of testimony held before John H. Eadie, Trial Examiner for the National Labor Relations Board, together with all exhibits introduced into evidence.

(6) Copy of Trial Examiner Eadie's Intermediate Report, dated October 5, 1943.

(7) Copy of order transferring case to the Board, dated October 9, 1943.

(8) Copy of respondent's exceptions to the Trial Examiner's Intermediate Report, dated November 4, 1943.

(9) Copy of decision and order issued by the National Labor Relations Board December 2, 1943, with Trial Examiner's Intermediate Report annexed, together with affidavit of service and United States Post Office return receipts thereof.

In testimony whereof the Chief of the Order Section of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 28th day of January 1944.

[SEAL]

JOHN E. LAWYER,
Chief Order Section,
National Labor Relations Board.

104 In United States Circuit Court of Appeals

Petition for enforcement of an order of the National Labor Relations Board

Filed February 1, 1944

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Sixth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, c. 372, 29 U. S. C. § 151 et seq.), respectfully petitions this Court for the enforcement of its order against respondent, Jones & Laughlin Steel Corporation, Cleveland, Ohio, and its officers, agents, successors and assigns. The proceedings resulting in said order are known upon the records of the Board as "In the Matter of Jones & Laughlin Steel Corporation and United Steelworkers of America (CIO), Case No. 8–C–1548" and "In the Matter of Jones & Laughlin Steel Corporation, Otis Works and United Steelworkers of America (CIO), Case No. R–5183."

In support of this petition the Board respectfully shows:

(1) Respondent is a Pennsylvania corporation, engaged in business in the State of Ohio, within this judicial circuit, where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof, certified by the Board and filed with this Court herein, to which reference is hereby

made, the Board, on December 2, 1943, duly issued an order directed to respondent, and its officers, agents, successors and assigns. The aforesaid order provides as follows:

ORDER

Upon the entire record in the case and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Jones & Laughlin Steel Corporation, Cleveland, Ohio, and its officers, agents, successors and assigns, shall:

105 1. Cease and desist from:

(a) Refusing to bargain collectively with United Steelworkers of America (CIO) as the exclusive representative of all patrolmen, watchmen, and firemen, including dump laborers, employed by the respondent at its Otis Works, but excluding lieutenants, captains, and supervisors;

(b) Engaging in any like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collective through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with United Steelworkers of America (CIO) as the exclusive representative of all patrolmen, watchmen, and firemen, including dump laborers, employed by the respondent at its Otis Works, but excluding lieutenants, captains, and supervisors;

(b) Immediately post in conspicuous places throughout its Otis Works plants in Cleveland, Ohio, including the premises occupied by its patrolmen, watchmen, firemen, and dump laborers, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Order; and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of this Order;

(c) Notify the Regional Director for the Eighth Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

106 (3) On December 2, 1943, the Board's decision and order was served upon respondent by sending a copy thereof

postpaid, bearing Government franks by registered mail, to James C. Beech, Esquire, respondent's attorney in Pittsburgh, Pennsylvania.

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, the Board is certifying and filing with this Court a transcript of the entire record in the proceedings before the Board, including the pleadings, testimony and evidence, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the order made thereupon as set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board, and requiring respondent, and its officers, agents, successors and assigns to comply therewith.

NATIONAL LABOR RELATIONS BOARD,
(S) HOWARD LICHTENSTEIN,
Assistant General Counsel.

Dated at Washington, D. C. this 28th day of January 1944.

DISTRICT OF COLUMBIA, *ss:*

Howard Lichtenstein, being first duly sworn, states that he is Assistant General Counsel of the National Labor Relations Board, petitioner herein, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing petition and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information and belief.

(S) HOWARD LICHTENSTEIN,
Assistant General Counsel.

Subscribed and sworn to before me this — day of January 1944.

[SEAL] (S) JOHN E. LAWYER,
Notary Public, District of Columbia.

My commission expires August 31, 1944.

In United States Circuit Court of Appeals

Designation by the National Labor Relation Board of portions of the record to be printed

Filed February 4, 1944

Comes now the National Labor Relations Board, petitioner herein, and, in conformity with the rules of this Court, designates the following portions of the transcript of the proceedings, the exhibits, and other papers of record herein to constitute the printed record before the Court:

I. Case No. 8–C–1548:

From		Through	
Page	Line	Page	Line
1	1	1	21
8	11	10	10
13	7	14	21
15	24	16	2
16	19	18	1
23	7	25	17
26	3	26	6
26	14	26	24
28	24	29	3

Print the following documents:

(a) Boards Exhibits: 1–C, 1–D, 1–F, 2, 4, 5, 6.

(b) Respondent's exhibits: 1, 2, 3–A.

(c) Board's Decision and Order; dated December 2, 1943.

(d) Trial Examiner's Intermediate Report; dated October 5, 1943.

(e) Respondent's Exceptions to Trial Examiner's Intermediate Report.

II. Case No. R-5143:

From		Through	
Page	Line	Page	Line
1	1	1	21
10	14	11	23
12	3	18	8
18	14	25	17
28	6	29	12
29	18	30	18
31	1	31	22

Print the following documents:

(a) Board Exhibit 1: (print the Petition for Investigation and Certification of Representatives only).

(b) Report on Ordered Election dated May 27, 1943.

(c) Certification of Representatives dated June 5, 1943.

(d) Petition for enforcement and respondent's answer thereto.

(e) This designation of record.

(S) HOWARD LICHTENSTEIN,
Assistant General Counsel,
National Labor Relations Board.

Dated at Washington, D. C. this 28th day of January 1944.

109 In United States Circuit Court of Appeals

Designation by Respondent Jones & Laughlin Steel Corporation of additional portions of the transcript to be included in the printed record

Filed February 18, 1944

And now, to wit, this 17th day of February 1944, comes Jones & Laughlin Steel Corporation, respondent in the above entitled case, and in conformity with the Rules of this Court, designates the following portions of the transcript to be added to those heretofore designated by the National Labor Relations Board, petitioner, to be included in the printed record before the Court:

I. Case No. R-5143:

Excerpts from typewritten transcript of testimony:

From		Through	
Page	Line	Page	Line
6	15	6	18
7	5	7	20
8	11	10	13
25	18	28	5
30	19	30	24
31	23	33	20

Also print the following document:
C. I. O. Exhibit No. 1.

II. Case No. 8–C–1548:
Excerpts from typewritten transcript of testimony:

From		Through	
Page	Line	Page	Line
5	10	5	13
6	4	8	10
11	15	13	6
14	22	14	23
15	4	15	6
16	13	16	15
18	2	18	26
20	11	21	18
22	21	23	6
25	18	25	24
26	25	27	8
29	4	29	21
30	11	30	14
31	6	31	14
31	21	32	22

Also print the following document:
Respondent's Exhibit No. 4.

III. This designation of additional portions of the record.

Respondent respectfully suggests that in the printed record, the documents and testimony should be arranged as nearly as possible in chronological order.

(S) JOHN C. BANE, JR.,
(S) REED, SMITH, SHAW & MCCLAY,
Attorneys for Respondent,
JONES & LAUGHLIN STEEL CORPORATION.

111 In United States Circuit Court of Appeals

Order granting leave for Chrysler Corporation to file brief amicus curiae

Filed Sept. 11, 1944

The application of counsel for the Chrysler Corporation to be permitted to file a brief amicus curiae, is granted.

In United States Circuit Court of Appeals

Cause argued and submitted

Filed Oct. 16, 1944

Before HICKS, SIMONS, and ALLEN, JJ.

This cause is argued by F. J. Donner for Petitioner, by John C. Bane for Respondent and by T. R. Iserman for Chrysler Corporation as amicus curiae, and is submitted to the court.

112 In United States Circuit Court of Appeals

Judgment denying Board's petition for enforcement

Filed Dec. 8, 1944

On petition for enforcement of an order of the National Labor Relations Board.

This cause came on to be heard on the transcript of record from the National Labor Relations Board, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the petition for enforcement of the order of the said Board be and the same is hereby denied.

113 Nos. 9730 and 9769

United States Circuit Court of Appeals, Sixth Circuit

No. 9730

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

JONES & LAUGHLIN STEEL CORPORATION, RESPONDENT

No. 9769

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

FEDERAL MOTOR TRUCK COMPANY, RESPONDENT

On Petition for Enforcement of Orders of the National Labor Relations Board

Opinion

December 8, 1944

Before HICKS, SIMONS, and ALLEN, Circuit Judges.

HICKS, Circuit Judge. For these cases one opinion will suffice. No jurisdictional question is involved.

In the Jones & Laughlin case, No. 9730, the petitioner, herein called the Board, seeks the enforcement of an order directing respondent to bargain collectively with United Steel Workers of America (C. I. O.), herein called the Union, as the exclusive representative of all its patrolmen, watchmen, firemen, including "dump laborers," herein called plant protection employees, employed by respondent at its Otis Works, but excluding lieutenants, captains, and supervisors. There is included in the membership of this Union, not only plant protection employees, but production employees as well.

In the Federal Motor Truck Company case, No. 9769, the
114 Board seeks the enforcement of an order directing respondent to bargain collectively with Amalgamated Plant Protection Local No. 114, U. A. W. (C. I. O.), herein called the Union, as the exclusive representative of all its plant protection employees at its three Detroit plants, excluding the plant engineer, the assistant chief of plant protection, and all supervisory employees.

The enforcement of the orders is resisted by respondents.

These orders were based upon records made before trial examiners, including results of elections held by direction of the Board, in which the majority of the plant-protection employees, in each case, selected the Unions indicated, as their exclusive representatives for the purpose of collective bargaining with respect to rates of pay, wages, hours, and other conditions of employment. In each case the Board affirmed the reports of intermediate examiners to the effect that the employees classified as "plant protection employees" constituted appropriate units for the purpose of collective bargaining within the meaning of Sec. 9 (a) and (b) of the National Labor Relations Act.

By subdivision (b) the duty of determining the unit of employees appropriate for the purpose of collective bargaining is placed specifically and exclusively upon the Board. Pittsburgh Plate Glass Co. v. Board, 313 U. S. 146, 152. But the Board's authority in making such determination is not an absolute one—it must be exercised within the permissible limits of administrative discretion and whether it did so in these cases is the principal question for review. Marlin-Rockwell Corp. v. N. L. R. B., 116 Fed. (2d) 586, 587 (C. C. A. 2); N. L. R. B. v. Delaware-New Jersey F. Co., 128 Fed. (2d) 130, 137 (C. C. A. 3); N. L. R. B. v. Botany Worsted Mills, 133 Fed. (2d) 876, 880 (C. C. A. 3).

In determining an appropriate unit for collective bargaining, the Board is required by Sec. 9 (b) to consider whether its order will insure employees the full benefit of their rights to self-organization and collective bargaining, and this involves the inquiry as to who are "employees," or to be more specific, whether "plant protection employees" are entitled to the benefits of the Act. Here, the Board must give consideration to Sec. 2 (2) and (3). Subdivision (3) provides that "the term 'employee' shall include any employee * * *," but subdivision (2) provides that "the term 'employer' includes any person acting in the interest of an employer directly or indirectly. * * *"

115 Plant protection employees are "employees" when considered in their relationships to their employer [N. L. R. B. v. Skinner & Kennedy S. Co., 113 Fed. (2d) 667, 671 (C. C. A. 8)] but we find it difficult to determine that they are "employers" when their relationship to their fellow employees is considered. However, under the facts pertaining to their duties as hereinafter set forth, we are unable to say that the Board exceeded the limits of its discretion in determining that plant protection employees are entitled to the protection of the Act. We think that, in determining this question, the Board properly accepted for its guidance the underlying economic facts of the cases in hand. Board v. Hearst Publications, 322 U. S. 111, 129; N. L. R. B. v. Blount,

131 Fed. (2d) 585, 590 (C. C. A. 8); N. L. R. B. v. Gluck Brewing Co., 144 Fed. (2d) 847, 855 (C. C. A. 8).

The question as to who are employers or employees under the Act is usually presented in cases where some person or agency acting either directly or indirectly for the employer interferes or seeks to interfere with the rights of employees to organize. I. A. of M. v. Labor Board, 311 U. S. 72; N. L. R. B. v. Taylor-Colquitt Co., 140 Fed. (2d) 92 (C. C. A. 4). That situation is not presented here.

Nevertheless the Board could not stop with its finding upon the facts that plant protection employees are entitled to the benefits of collective bargaining. It is required under Sec. 9 (b) to go further and determine whether the unit or units selected for that purpose would effectuate "the policies of Sec. 151–166 of this Title. * * *" In both cases respondents concede, as they must concede (Pittsburgh P. Glass Co. v. Board, supra) that the Board had wide discretion in determining whether the units selected were appropriate, and if so, whether their selection effectuated the policies of the Act. But each respondent has insisted from the beginning, and now insists, that in making such determinations the Board went clearly beyond the limits of its discretion. If this is true, the orders are invalid as a matter of law. Pittsburgh P. Glass Co. v. N. L. R. B., 113 Fed. (2d) 698, 704 (C. C. A. 8), affirmed 313 U. S. 146, 152; Midland Steel Products Co. v. N. L. R. B., 113 Fed. (2d) 800, 805 (C. C. A. 6).

We are confronted with a preliminary inquiry into the nature of the policies of the Act. These are set forth in its preamble [Title 29, Sec. 151 U. S. C. A.] and we need not repeat them. It is sufficient to say that the fundamental purposes of the Wagner Act are to eliminate and prevent obstructions to the free flow
116 of interstate commerce (Labor Board v. Fansteel Corp., 306 U. S. 249, 257) and that in its administration, the Board acts in a public capacity and in the public interest.

In National Licorice Co. v. Labor Board, 309 U. S. 350, at page 362, the court said:

"The proceeding authorized to be taken by the Board under the National Labor Relations Act is not for the adjudication of private rights. Amalgamated Utility Workers v. Consolidated Edison Co. ante, p. 261; H. Rept. No. 1147, 74th Cong., 1st Sess., Committee on Labor, p. 24; cf. Federal Trade Commission v. Klesner, 280 U. S. 19. It has few of the indicia of a private litigation and makes no requirement for the presence in it of any private party other than the employer charged with an unfair labor practice. The Board acts in a public capacity to give effect to the declared

public policy of the Act to eliminate and prevent obstructions to interstate commerce by encouraging collective bargaining. * * *"

In Amalgamated Workers v. Edison Co., 309 U. S. 261, at p. 265, the court said:

"The Board as a public agency acting in the public interest, not any private person or group, not any employee or group of employees, is chosen as the instrument to assure protection from the described unfair conduct in order to remove obstructions to interstate commerce."

In Board v. Hearst Publications, supra (p. 123) the court said:

"The Wagner Act is federal legislation, administered by a national agency, intended to solve a national problem on a national scale."

In N. L. R. B. v. Colten, 105 Fed. (2d) 179, 182, we said:

"This contention, however, ignores the essential nature of regulatory statutes of the class here considered, and the scope and purpose of administrative orders made in exercise of powers conferred by such legislation. They are to implement a public social or economic policy not primarily concerned with private rights, and through remedies not only unknown to the common law but often in derogation of it."

117 This statement was in substance repeated in Consumers Power Co. v. N. L. R. B., 113 Fed. (2d) 38, 44 (C. C. A. 6).

In selecting appropriate units for collective bargaining, the duty of the Board to consider the public interest as a material factor is not different from that imposed upon it in the administration of any other feature of the Act. It must consider the public interest and may not delegate its authority in this respect. See Marshall Field & Co. v. N. L. R. B., 135 Fed. (2d) 391, 393 (C. C. A. 7). To assist it in arriving at a conclusion, it may, under Sec. 9 (c) of the Act (29 U. S. C. A., Sec. 159 (c)) take a secret ballot of employees, but it is not compelled to do so. Marlin-Rockwell Corp. v. N. L. R. B., supra (p. 587). In case an election is held, the Board should consider the will of the majority of the employees, but the result of the election does not altogether conclude the matter. In N. L. R. B. v. Delaware-New Jersey F. Co., supra (p. 137), the court said:

"But the point here is, not what the officers want, not what the men want, nor what the company either wants or is willing to acquiesce in, but rather what is the public interest."

This statement had approval in Glen Alden Coal Co. v. N. L. R. B., 141 Fed. (2d) 47, 50 (C. C. A. 3).

We think that in each order under review the Board failed to give adequate consideration to the national welfare and this is a fundamental error. In adopting the conclusions of the trial

examiners that the Unions selected by a majority of the plant protection employees were appropriate, the Board failed to give effect to the fact that from December 11, 1941, the country was at war, a fact which we judicially know, and it failed to consider the further unquestioned fact that each respondent was engaged in the production of war material and other necessities for the armed forces and the national war effort.

We proceed to consider the undisputed facts in each case.

In the Jones & Laughlin case, No. 9730, the respondent on June 30, 1942, acquired and began to operate two steel plants in Cleveland, known as the "Otis Works." In that year it produced in these plants one million tons of its products. It employed approximately 4700 men and women in its mills and buildings; to protect its investments in these plants and to keep peace and preserve order among its employees, it maintained a force of uniformed plant guards, consisting of a captain, eight lieutenants, fifty-eight patrolmen, two fire captains, two firemen and two "dump laborers" who performed plant protection work. It was the duty of the guards to keep out intruders; to see that the rules and regulations of respondent were observed within the plant for the benefit of all concerned, and to act as conservators of the legal rights of respondent. They had the additional responsibility of carrying out the orders of the management, often of a confidential nature. The duties of the fire captains and firemen are indicated by their titles.

In the Federal Motor Truck Co. case, No. 9769, the respondent in 1942 operated three plants in Detroit in the exclusive production of motor trucks, bodies, cabs and parts for use in the war effort. In that year it delivered finished products to points outside of Michigan of the approximate value of $25,000,000.00. It had about 660 production employees and about 18 plant protection employees. The duties of these employees were substantially similar to the guards or watchmen in the Jones & Laughlin plants. It was their duty to identify all workmen, trucks and cars that entered or left the plant; to examine the parcels and lunch boxes of the employees; to escort railroad cars into the yards; to make recommendations as to the discharge of employees and to make arrests, without warrants, for violation of the Sabotage and Espionage Acts.

In common with similar watchmen or guards employed in the Jones & Laughlin plants, they carried arms, wore uniforms, were organized into companies and were militarized. They were styled Auxiliary Military Police and were commanded, drilled and instructed as such. They were required to enter into an agreement with the United States that they would well and faithfully discharge their duties in the protection of war materials and utilities,

and would obey any orders in connection therewith issued by the President as Commander-in-Chief, or his duly authorized officers, and would be governed by the Articles of War and would subject themselves to military law. They were required to take the usual oath incident to induction into the Army.

Upon the other hand, when they were inducted into the Unions and became subject to their orders, rules and decisions, the plant protection employees assumed obligations to the Unions and their fellow workers, which might well in given circumstances bring them in conflict with their obligation to their employers, and with their paramount duty as militarized police of the United States Government.

119. The national welfare is of supreme importance and especially is this true in time of war. The evidence reflects the deep concern of the Government for the maintenance and protection of respondents' plants and for the integrity and volume of their products.

If these matters were given consideration by the Board it was nowhere reflected in any of its orders or decisions. It contented itself with the adoption of the reports of trial examiners that the units selected were appropriate for the purposes of collective bargaining with respect to rates of pay, wages, hours and other conditions of employment. It nowhere finds that the bargaining units were selected in deference to the imperative public interests. Assuming that the units selected would in their negotiations have due regard for the national welfare, such an assumption would not satisfy the statute.

The Board, under Sec. 9 (b) had a positive duty to perform in the interest of the public. It must be kept in mind that in time of national peril, the preservation, protection and promotion of the national welfare is the paramount objective; and the Board must select bargaining agents with this in view. It must anticipate that the Union selected as agent would negotiate through individual members who had a common interest with the employees in securing for themselves advantageous agreements with respect to hours, wages and other conditions of employment. It is manifest that these personal interests of the bargainors, as well as the demands made upon them either by the employees or employers might necessarily constitute a serious and embarrassing handicap when it came to the consideration of the interest of the public. When these particular Unions were selected as bargaining agents for the plant protection employees, these employees might in an effort to discharge their duty to their employer find themselves in conflict with other members of their Union over the enforcement of some rule or regulation they were hired to enforce; or upon the other hand, in conflict with the Federal Government

because of fealty to the Union at the time of a dispute involving the public interest. We think that the imposition of such strains upon personal allegiance and personal interest would undoubtedly be detrimental to the public interest and to the free flow of commerce.

Confining ourselves to the facts of these particular cases, we conclude for the reasons indicated, that the applications to enforce the orders under review should be, and they are, therefore denied.

120 In United States Circuit Court of Appeals

Order extending time for filing petition for rehearing

Filed Jan. 8, 1945

In these cases the petitioner, National Labor Relations Board, is allowed until and including January 8, 1945, within which time to file its petition to rehear.

121 In the United States Circuit Court of Appeals for the Sixth Circuit

Nos. 9730 and 9769

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

JONES & LAUGHLIN STEEL CORPORATION, RESPONDENT

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

FEDERAL MOTOR TRUCK COMPANY, RESPONDENT

Petition of National Labor Relations Board for rehearing

Filed Jan. 8, 1945

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Sixth Circuit:

The National Labor Relations Board respectfully petitions this Honorable Court for a rehearing in the above-entitled causes and respectfully shows to the Court as follows:

On December 8, 1944, the Court issued an opinion in the above-entitled causes in which it denied enforcement to orders of the Board requiring respondents to bargain with labor organizations representing separately constituted bargaining units of plant pro-

tection employees at each of respondents' plants. In our
122 view, these decisions are of great importance because they so alter basic labor relationships in wartime as to threaten the public interest. In its briefs in both cases the Board was concerned with respondents' contentions that plant protection employees are not employees within the meaning of the Act, since these were the contentions primarily pressed upon the Board, rather than with the impact of the militarized status of the plant protection employees upon the bargaining unit or the type of bargaining agency which the employees may select. Because the Court denied enforcement to the Board's orders for the latter reasons only, we present here considerations which we believe were either inadequately or not at all presented to the Court concerning the relationship between the militarized status of the guards, the bargaining unit and the type of bargaining agency selected, and the national welfare.

I

The Court's decisions holding that the public interest requires denial of the Board's bargaining orders are inconsistent with authoritative military regulations which endorse the bargaining procedures involved not only in this case but in some 175 others. Thus, on March 17, 1943, the War Department issued from the Headquarters of the Army Service Forces its Circular No. 15 in which the military authorities charged with the security of industrial plants throughout the nation laid down regulations governing the status of plant protection employees enrolled in the auxiliary military police of the type involved here.[1]
123 Under the heading "Labor Relationships," these regulations spell out the type of collective bargaining relationship deemed consistent with security. Section 6 h (2) of the regulations provides (No. 9769, R. 86):

"Auxiliary Military Police are permitted to bargain collectively, but no such activity will be tolerated which will interfere with their obligations as members of the Auxiliary Military Police. In view of recent decisions by the National Labor Relations Board (see In re Lord Mfg. Co. v. United Rubber Workers of America, CIO, Case No. R-4820, February 1943), the Auxiliary Military Police should be represented in collective bargaining with the management by a bargaining unit other than that composed of the production and maintenance workers, although both bargaining units may be affiliated with the same labor organization. Where the guards are not now included in the same bargaining unit, this is mandatory; where the guards are included in such unit, serious

[1] These regulations appear in the record of No. 9769 at pp. 75–96.

consideration will be given to effect a change to conform to the foregoing policies."

It is evident from the foregoing that the military authorities view the collective-bargaining relationship as one appropriate to the status of plant-protection employees and consistent with their security functions. Likewise, the interests of security do not require, in the view of the military authorities, that the bargaining agent be a different one from that representing the production and maintenance workers. Considerations of security do, however, require that the bargaining unit into which plant-protection
124 employees are grouped be confined to such employees and that such unit be separate from bargaining units of production and maintenance employees. In adopting this precaution, the Army Service Forces expressly followed[2] the Board's decision in Matter of Lord Manufacturing Company (47 N. L. R. B. 1032, decided February 25, 1943). This case is one of a series of cases in which the Board itself, even before the issuance of the regulation above adverted to, abandoned its normal determinants for the shaping of units of guards and production workers, such as the functional coherence between the two kinds of work, the history of bargaining, whether on a differentiated or joint basis, and the desires of the organizations involved.[3] Instead, the Board, in explicit deference to the wartime status of plant-protection employees, laid down a fixed administrative policy of confining plant-protection employees in plant engaged in war work to a bargaining unit separate from a unit of production workers.[4] It
125 was this administrative policy, initiated by the Board in order to accommodate collective bargaining to the exigencies of war production, which the military authorities adopted. It

[2] See No. 9769, R. 86–87.

[3] See Third Annual Report of the National Labor Relations Board (Government Printing Office, 1938), pp. 184–190.

[4] "The manner in which recognition of wartime conditions molded prior discretionary consideration in this area into a settled administrative policy is seen from two cases, Matter of U. S. Electric Motors, Inc., 45 N. L. R. B. 298 (October 31, 1942), and Matter of Julius Petersen, 46 N. L. R. B. 1049 (January 13, 1943), both of which are cited in the Lord decision. In the former case, the only labor organization involved in the proceeding sought to include the plant guards within a unit of production and maintenance employees. The Board noted (45 N. L. R. B. at 300) that the guards have recently been inducted as civilian members of the Auxiliary Military Police with a dual responsibility to the company and to the military authorities for the general safety of the plant." The Board then pointed out, "At the request of the only labor organization involved in a representation proceeding, the Board has frequently included ordinary watchmen in a single industrial unit with production and maintenance workers. Under present conditions at the plant, and in the absence of any precedent of past bargaining between the Company and its employees including watchmen, we shall exclude guards from the unit composed of regular production and maintenance employees." In the Petersen case a C. I. O. union sought the inclusion within a unit of production employees of armed guards subject to the regulation of the United States Coast Guard, while an A. F. of L. organization proposed that they be excluded. After noting their security functions, the Board stated (46 N. L. R. B. at 1054): "For reasons we have set forth in other decisions, we have held that such plant protection employees are advisedly excluded from units of production employees and are properly included in a bargaining unit restricted to employees of their class. We shall therefore exclude plant protection employees from the unit for general production and maintenance employees and shall include them, excepting their captain, in a separate unit for bargaining purposes."

is to be further noted that although in the Lord case the organization which sought to represent the guards was different from that representing the production workers, the military authorities declined to impose such organizational differentiation as a security requirement in collective bargaining but, on the contrary, expressly permitted "the same labor organization" to represent both bargaining units.

Because the term, "the same labor organization," as used in Circular No. 15, involved an ambiguity, a clarifying
126 memorandum was issued by the War Department on July 10, 1943, for the commanding generals of all service commands. This memorandum[5] states:

"1. It has been reported to the headquarters that labor officers are interpreting Circular No. 15, this headquarters, 17 March 1943, subject, 'Auxiliary Military Police,' as prohibiting membership of plant guards enrolled as Auxiliary Military Police in the same trade union local as that representing production and maintenance workers.

"2. Paragraph 6 (h) (2), Circular No. 15, presents applicable War Department policy on plant guard labor representation.

"3. In the event that plant guards enrolled as Auxiliary Military Police desire to be represented in collective bargaining with the management, they should be represented by a bargaining unit other than that representing the production and maintenance workers. However, in such event, *both bargaining units may be affiliated with the same trade union local*, provided they are, in fact, separate bargaining units." [Italics supplied.]

This document makes it apparent that, once plant protection employees are segregated in a separate bargaining unit, the requirements of security are fully met and not only may the same international union represent them which represents the production workers but they are free to select the same local union which represents the production workers.

The instant cases therefore fall well within the Army's
127 security requirements. In the Federal Motor case not only did the Board prescribe a separate bargaining unit but the union involved was a local limited only to plant protection employees (R. 22–23). In the Jones & Laughlin case the unit also excluded production workers and the International Union, which sought to represent them, undertook, as the Board found, to bargain for the plant protection employees separately (R. 74). (And we are informed by our Regional Office that the International Union, involved in the Jones & Laughlin case, chartered a separate local for plant protection employees.)

[5] Printed in full as Appendix A.

It would thus appear that the Court's decisions, if left standing, would condemn the Board as arbitrary in cases in which the unit is shaped not only in accordance with the views of the security authorities but in which additional safeguards assure effective accommodation of the collective bargaining rights of plant protection employees to their wartime responsibilities. In so deciding the Court has, inadvertently we believe, not only substituted its judgment for that of the Board and the military authorities but has also exposed wartime commerce to the very perils of interruption which Congress in the National Labor Relations Act has sought to prevent by promoting freedom of choice.

II

Congress has imposed upon the Board the duty so to fashion bargaining units as "to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act." Section 9 (b).
128 But the Board does not hew to the statutory objective single-mindedly and without regard to other aspects of Federal policy. In the present case the Board has carefully framed an area of accommodation between the objectives of the statute and the requirements of war production. We submit that the Court has not only overlooked this fact but, in insisting that the key statutory value of free choice itself be abandoned in the public interest, has also ignored the effects upon wartime production of a denial of free choice.

"The policies of this Act" apply with a peculiar urgency to a nation at war. The need for uninterrupted war production may not be viewed as a secondary consideration to be lightly jeopardized by the creation of barriers to that freedom of choice which Congress has deemed essential to an undisturbed commerce. The fact that militarization has imposed greater restrictions upon the plant-protection employees has not been deemed by the military authorities themselves a reason for denying them the benefits of the Act.[8] Indeed, the surrender by plant-protection employees of traditional rights and their submission to novel restraints emphasize rather than relax the need for maintaining the integrity of the right of choosing a bargaining representative, for the
129 bargaining process is then the only way in which problems

[8] The Board has been informed by representatives of the Army Service Forces that in accordance with the Army's policies of restoring civilian controls to industry wherever possible, the militarization program has been contracted from 15,000 to 3,000 plants and that the number of guards militarized has fallen from 190,000 to between 50 and 60 thousand. Pursuant to this policy, the Jones & Laughlin plant involved in this proceeding has already been demilitarized and the Federal motor establishments here involved have been, or are in the process of being demilitarized.

arising out of the relationship may be defined and solved.

The Court's decisions hold that plant protection employees are not to have "unions of their own choosing." Its holding that broader considerations of national safety require such an extraordinary result cannot be reconciled with authoritative Army regulations which plainly reflect an unwillingness, because of any fears of a division in allegiance, to break down the exercise by plant protection employees of their rights under the statute and to expose war plants to consequent labor unrest.

Insofar as the decisions reflect the view that membership in the unions here involved will jeopardized the loyalty of the guards to their employer; it should be pointed out that as long ago as 1937, the Supreme Court[7] rejected an analogous contention by pointing out, as the Board did in these cases, that the Act in no way limits the power of discharge for improper performance of duty.[8] In addition, bargaining contracts for plant guards impose upon them special responsibilities and take cognizance of their peculiar
130 status. An examination of more than fifty contracts[9] between production workers' unions and employers engaged in war production covering militarized guards and related workers discloses that the unions involved are fully aware of the responsibilities of armed guards.

Thus, a standard provision in such contracts states that nothing therein should be construed to abrogate or interfere with the War Department's control over such employees or their duties and responsibilities as auxiliary military policemen.[10] Production unions likewise agree that the guards perform their assigned duties "impartially and without regard to any union or nonunion affiliation or activities." The unions involved further agree to respect the confidential character of information which guards may acquire, to refrain from strikes, stoppages, or interruptions of work. Of particular significance here is a frequent undertaking by production unions representing plant protection employees that in the event of a strike of production workers, the guards will continue to
report for duty, remain at their posts and discharge their
131 assigned duties in the usual manner. Finally, characteristic of these contracts are provisions that failure on the part of

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[7] See Matter of Budd Wheel Co., 52 N. L. R. B. 660, 670, and compare In re Youngstown Sheet & Tube Co., decision of Regional Board VI of the War Labor Board, Case No. 111-3602-D, decided April 7, 1944, 15 War Labor Rep. 509, in which the latter Board awarded a union of production workers representing plant guards a maintenance of membership contract and rejected a contention similar to that which forms the basis of the court's decision.

[8] In Associated Press v. N. L. R. B., 301 U. S. 103, 131-132.

[9] These documents are on file in the Industrial Relations Division, Bureau of Labor Statistics, Department of Labor. Relevant and typical selections from them are set out in Appendix B.

[10] Such a provision is printed in full in Appendix B. See also In re Brewster Aeronautical Corp., decision of National War Labor Board, Case No. 111-3372-D, decided September 24, 1943, 11 War Labor Rep. 286, and In re Great American Industries, decision of Regional Board IV of the War Labor Board, Case No. 111-467-C, decided August 27, 1943, 11 War Labor Rep. 287.

any plant protection employee "to observe and fulfill work responsibilities shall be just cause for discipline by the company up to and including summary dismissal."

The Army regulations and scores of Board decisions in this field have given rise to a bargaining structure which the Court's decisions destroy. If the decisions remain standing, this delicate and difficult area of labor relations will be subject to the explosive consequences which a denial of free choice necessarily entails. Moreover, existing bargaining contracts, grievance procedures, and other mechanisms of adjustment are swept away. An invitation is extended for the launching of new unions and of new organizing drives in war plants. A justification is supplied for the invasion of plants already organized by one union of production workers by another production workers' union for the purpose *of organizing plant guards*. Such a situation in a plant means not only poor labor relations but makes possible serious interunion rivalries. Problems of union recognition, highly productive of industrial disputes,[32] will be precipitated in the nation's war plants. And in limiting the statutory rights of plant guards, the decision can only serve to intensify manpower problems and to demoralize both guards and production workers by insisting that, as a matter of law, their self-interest is greater than their patriotism.[33]

Finally, the decision undermines the entire stabilization program for plant guards. Scores of contracts already approved by the War Labor Board in which production workers' unions represented plant guards are now condemned.[34] Solution of pressing wage and union security problems in cases now pending before the War Labor Board must be deferred until the underlying bargaining procedures conform to the Court's decision.[35]

War production must be protected from these consequences; the public interest in an undisturbed commerce, which the statute safeguards, is consistent with the national welfare which is the Court's concern.[36]

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[32] In the past two years and a half 15 volumes of its decisions, the Board has decided no less than 175 cases in which it has approved a bargaining pattern of the type here involved. These cases are collected in Appendix C.

[33] U. S. Dept of Labor, Bulletin No. 782, Strikes in 1943 (Washington, D. C., 1944), p. 18.

[34] That this is no mere speculation, see the Youngstown Sheet & Tube case, supra.

[35] Both in regional proceedings of the War Labor Board in Detroit and in national Board proceedings in Washington, employers have sought on the basis of the court's decision to suspend processing by the War Labor Board of cases involving plant guards.

[36] The cases cited by the court which stress the "public" aspect of the statute in no way minimize the importance of freedom of choice. They contrast private rights not with an undifferentiated and undefined public welfare but with the public interest in a free flow of commerce which forms the basis of the statute. And far from holding that extrastatutory considerations limit the powers of the board, as the court suggests, these cases expand the powers of the board precisely because of the public importance of the statutory objectives.

III

The Court's decisions may not be justified by any asserted
133 defect in the Board's findings or any failure by the Board properly to balance the statutory rights of the plant guards against the special responsibilities which wartime conditions impose upon them. In both of these cases the Board found that the unit which it selected is "appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act" (No. 9769, R. 26; No. 9730, R. 74). In both of these cases the Board found that respondents' refusals to bargain with the respective unions "tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce" (No. 9769, R. 10; No. 9730, R. 88). We submit that these findings give effect "to the imperative public interests" which the Court claims the Board has slighted in a concrete and important way. How could uninterrupted war production be assured if other interests required the Board to disregard conduct which, as declared by the statute, burdens and obstructs commerce in the goods produced?

At the other end of the scale, the Board gave full recognition to the special wartime role of plant guards. Thus, as we have already noted, it deviated from its administrative norms and put into effect its wartime policy of placing such guards in separate units. In both cases, moreover, the Board noted the special character of plant guard functions and the relationship of the plant guards to the United States Government (No. 9730, R. 73; No. 9769, R. 25). In both cases the Board adverted to its prior administrative decisions rejecting the reasons for denying controlling effect to the considerations deemed determinative by the Court (No. 9730, R. 73–74, 99; No. 9769, R. 26).

134 The decisions cited by the Board establish that the Board's instant determinations are not casual and unconsidered, as the Court suggests, but a specific application of a developed administrative policy in which contentions with respect to the wartime status of guards have been weighed against the statutory objectives. Thus, in Matter of Chrysler Corp., 44 N. L. R. B. 881, 885–886,[*] the Board placed plant guards in a separate bargaining unit and noted that "The present production of war materials at the Company's plants increases the importance of their work and their responsibilities." The Board then rejected the argument which forms the basis of the Court's decisions in the following language:

"The Company further contends that the Board should dismiss this proceeding on the ground that the organization of plant-

[*] Cited by the board in No. 9730, R. 74; see also No. 9769, R. 26.

protection employees and their affiliation with the same labor organization which represents the Company's production and maintenance employees, whose activities they watch and guard, has materially lessened the efficiency of the former. We perceive no necessary conflict between self-organization for collective bargaining and the faithful performance of duty. Freedom to choose a bargaining agent includes the right to select a representative whic hhas been chosen to represent other employees of the employer in a different bargaining unit. We are mindful of the increased responsibilities placed upon plant-protection employees in wartime, but the practices and procedures of collective
135 bargaining are flexible and may make full allowance for such added responsibilities.[7] If, in the instant case, the plant-protection employees select a local affiliated with the International to represent them as bargaining agent, it will be incumbent upon the International to impose a proportionate responsibility upon both organized groups of employees in order that their respective duties may be adequately and impartially performed. In any event, the remedy for inefficiency or wilful disregard or neglect of duty on the part of the plant-protection employees lies implicitly in the power of the Company to discipline or discharge them and in the power of the military authority to take all necessary steps to protect the public interest. We find, therefore, no reason to deny the request of the Company's plant-protection employees to constitute a separate bargaining unit and to deny them, as such, the right to bargain collectively with their employer through a representative of their own choosing."

The care with which the Board has treated this problem and its consciousness of the considerations involved is also manifest from its decision in Matter of Dravo Corp., 52 N. L. R. B., 322, 327–328.[17] In the Dravo case the Board not only segregated the guards from production workers for bargaining purposes
136 but separated a unit of guards who were militarized from those who were nonmilitarized. If thus indicated the reasons for its decision:

"The second argument raised by the Company deals with a possible conflict of interest which may arise when plant-protection employees join a labor organization. We give no weight to the implication that membership in a union tends to undermine the honesty of plant-protection employees or their competence to execute their duties satisfactorily. Self-organization for collective bargaining is not incompatible with efficient and faithful dis-

[7] See also *Matter of Frigidaire Division, General Motors Corporation*, and *United Electrical, Radio & Machine Workers of America*. (C. I. O.), 39 N. L. R. B. 1108, and cases cited therein [Board footnote]

[17] Referred to by the board in No. 9730, R. 99.

charge of duty. Should the performance of an employee deteriorate, the Company always has recourse to its normal disciplinary authority to insure the maintenance of its standards of work.

We come now to the question whether the militarization of guards alters the character of their employment. It cannot seriously be contended at this time that guards who are sworn into temporary membership in the armed services lose thereby any of the benefits of the Act.[6] On this issue, the petitioner and the Company are far apart in their contentions, the Union arguing that the fact the guards are sworn into reserve membership in the armed services is no reason for segregating them from other employees, whereas the Company urges that this should prevent these employees from being represented by any union which represents any other category of personnel employed by the corporation. In our view, neither contention can be supported.

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We cannot regard the induction of the guards into the Coast Guard Reserve as a meaningless act, since it does indicate that such persons from the nature of their oaths then owe allegiance directly to the Government, as well as to the corporation. The services do not contend, however, that such persons thereby become Government employees and are therefore outside the provisions of the Act. Nor would the facts in this case support such a contention, for it is clear that the wages and duties of this group of personnel remained unchanged after their induction so that it is apparent that the proximate relationship of employer and employee still exists between the Company and the guards.

"We therefore feel constrained to hold that the guards, as well as other employees, are free to select their own bargaining representatives under the Act.

"The militarization of plant-protection employees, while no obstacle to unionization, is nevertheless significant. As civilian auxiliaries of a military force, the guards have greater duties and obligations than have those plant-protection employees who are not militarized. To the end that the guard may be better able to function within the military sphere, and to permit the military authorities to exercise greater control over the guards, we shall establish a bargaining unit for all militarized plant-protection employees separate and apart from those who are nonmilitarized. We contemplate that the separation of the bargaining units in their negotiations with the Company and their day-to-day activities will be one of fact, not merely form. Since the petition for the nonmilitarized plant-protection employees does not raise the problem of merging them with the main unit of

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[6] See Matter of Consolidated Steel Corporation, Ltd., 57 N. L. R. B. 333, and cases cited therein. [Board footnote.]

production and maintenance employees, we find it unnecessary to decide that question here."

Finally, in Matter of Budd Wheel Co., 52 N. L. R. B. 666, 669–672,[18] the Board again enunciated administrative policy with respect to plant guards. It pointed out that in prior cases it had "consistently placed plant guards in units separate and apart from any unit of production and maintenance employees." In rejecting a contention that it would not effectuate the policies of the Act to order the Company to bargain with a union representing the guards, the Board stated:

"The declared policy of the Act is 'to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred.' Among the obstructions set forth in the Act are 'strikes and other forms of industrial strife or unrest' and 'inequality of bargaining power.' It can hardly be seriously contended that such obstructions result only from conflict between production employees and the employer. Nor do we believe that the war has eliminated all these obstructions; on the contrary, strife and unrest and inequality of bargaining power are likely to continue in the absence of collective bargaining, particularly in the face of self-imposed limitations on the right to strike and, in the case of militarized guards, the necessary restrictions imposed by the Government."

The Board's determinations in the instant cases are an expression of a policy which has been applied in the foregoing and in scores of other cases.[19] They cannot be viewed, as the Court appears to, as an administrative lapse occasioned by an unconsidered and routine treatment of a new problem. They may not be wrested out of their context nor may the Board be placed in default because it did not repeat every argument which its administrative policy rejects or every consideration upon which it is based. Cf. Securities and Exchange Commission v. Chenery Corp., 318 U. S. 80; N. L. R. B. v. Regal Knitwear Co., 140 F. (2d) 746 (C. C. A. 2), certiorari granted on another point, 65 Sup. Ct. 35.

The Board has tested this administrative principle against the record facts in case after case. But the Court has discarded it not on the basis of any fact but solely because of its belief that it would "undoubtedly" injure the public interest. We cannot believe that administrative policy, so evolved, should be brushed aside by a court without a more substantial showing of impropriety, par-

[18] Cited in No. 9730, R. 99.

[19] See National Labor Relations Board, Seventh Annual Report (Gov't Print. Off., 1943), p. 63; Eighth Annual Report (Gov't Print. Off., 1944), p. 57.

ticularly where to do so involves a sacrifice of the statutory principle of free choice and a concomitant threat to war production.

Wherefore, it is prayed that a rehearing of these cases be
140 granted, because of the great importance of the issue involved, and that on such rehearing the orders of the Board be enforced.

Respectfully submitted.

ALVIN J. ROCKWELL,
General Counsel,
MALCOLM F. HALLIDAY,
Associate General Counsel,
FRANK DONNER,
Attorney,
National Labor Relations Board.

JANUARY 1945.

CERTIFICATE OF COUNSEL

Comes now Alvin J. Rockwell, General Counsel for the National Labor Relations Board, and certifies that he has read and knows the contents of the foregoing petition, and that said petition is filed in good faith, and not for purposes of delay.

Alvin J. Rockwell.
ALVIN J. ROCKWELL.

WASHINGTON, D. C., *January 1945.*

141 APPENDIX A

WAR DEPARTMENT,
HEADQUARTERS, ARMY SERVICE FORCES,
Washington 25, D. C. 10 July 1943.

MEMORANDUM FOR COMMANDING GENERALS, ALL SERVICE COMMANDS

Subject: Plant guards.

1. It has been reported to this headquarters that labor officers are interpreting Circular No. 15, this headquarters, 17 March 1943, subject, Auxiliary Military Police, as prohibiting membership of plant guards enrolled as Auxiliary Military Police in the same trade-union local as that representing production and maintenance workers.

2. Paragraph 6 (h) (2), Circular No. 15, presents applicable War Department policy on plant guard labor representation.

3. In the event that plant guards enrolled as Auxiliary Military Police desire to be represented in collective bargaining with the management, they should be represented by a bargaining unit other

than that representing the production and maintenance workers. However, in such event, both bargaining units may be affiliated with the same trade-union local, provided they are, in fact, separate bargaining units.

SPX 231.4 (6 Jul 43) SPGCL-MB-E-M.

By command of Lieutenant General Somervell:

J. A. ULIO,
Major General, Adjutant General.

I hereby certify this to be a true copy of the original.

(S) Sidney C. Sufrin,
SIDNEY C. SUFRIN,
Lt. Col., CMP.

142 APPENDIX B

SELECTIONS FROM CURRENT CONTRACTS BETWEEN PRODUCERS OF WAR MATERIALS AND PRODUCTION UNIONS REPRESENTING MILITARIZED GUARDS ILLUSTRATING CLAUSES INSURING THE PROPER PERFORMANCE OF THE PROTECTION FUNCTION

Curtiss-Wright Corporation, Airplane Division—Buffalo Plants, Cheektowaga and Tonawanda, New York, and Victory Lodge 1661, District 76, of the International Association of Machinists (A. F. of L.)

ARTICLE V

PRIME MILITARY RESPONSIBILITY

It is understood that for the duration of the war this Agreement is, in all respects, subject to the provisions of the directives of the War Department concerning Military Organization of Plant Guard Forces (W. D. Directive, July 2, 1942, AG 231.43; SOS Circular 52, August 28, 1942; and amendments thereto), and nothing in this Agreement shall be construed in any way to interfere with the organization, training, and control by the War Department of the Employers' guard force as an Auxiliary to the Military Police, nor shall it operate to abrogate or interfere with the duties, responsibilities, and rights imposed by the War Department upon any employe in such Auxiliary Military Police.

(The above clause is contained in all contracts covering military guards on file with the Department of Labor.)

143 ARTICLE VII

STRIKES AND LOCK-OUTS

It is agreed that it is the purpose and intent of the parties hereto that all grievances or disputes arising between them over the interpretation or application of any of the terms of this Agreement shall be settled by the procedure set forth in Article XXI hereof.

The Union agrees that during the term of this Agreement there shall be no strikes, slow-ups, slow-downs, sit-downs, sympathy strikes, picketing, stoppages of work, or any other form of interference with production or other operations. The guards shall continue to discharge their duties even though other employes of the Employer may be on strike or picketing. The Employer reserves the right to cancel this Agreement in the event of any violation of this article or Article XI, and in addition, any individual or group violating the above may be discharged. The Employer agrees there shall be no lock-outs.

Bell Aircraft Corporation, Georgia Division, Marietta, Ga., and International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, Local 513 (C. I. O.)

ARTICLE V

RULES FOR GUARDS

1. The Union and its members recognize that it is the responsibility of the Guards to familiarize themselves with the established plant rules and to faithfully report all violations of these

144 2. The Union and its members agree that the guards shall discharge their assigned duties impartially and without regard to any Union or Non-Union affiliation or activities of any Company employee or employees, and that failure to do so will constitute cause for disciplinary action.

3. The Union and its members agree that every Guard shall keep confidential and not divulge to any person other than the Management of the Company (or the United States Army if so required during the war emergency) all confidential information involving plant security obtained from any source which has any bearing upon the Company and its plants, its operations, or personnel.

4. The Union and its members agree at no time to engage in any strike, work stoppage, sit-down or picketing, or any other activity which may interrupt their protection of the Company's premises or employees.

5. The Union agrees that, in the event of any strike, work stoppage, slow-down, picketing, or any other interruption of or inter-

forego with production of the Company at any of its plants caused by or engaged in by other employees of the Company, the employees who are members of the Union will continue to report for duty, remain at their posts, and, in the regular manner, discharge their duties assigned to them.

6. The Union agrees that failure on the part of any employee or employees to observe and fulfill such responsibilities shall be just cause for discipline by the Company up to and including summary dismissal.

* * * * * * *

115 Curtiss-Wright Corporation, Airplane Division, Columbus Plants, Columbus, Ohio, and International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, Curtiss-Wright Local 927

ARTICLE VII

STRIKES AND LOCK-OUTS

The Union agrees that during the term of this Agreement there shall be no strikes, slow-downs, sit-downs, sympathy strikes, picketing, stoppage of work, or any other form of interference with duties even though other employees may be on strike or picketing. Any individual, or group, violating the above will be disciplined by the Union and are subject to discharge by the Employer. The Employer agrees there shall be no lock-outs.

ARTICLE VIII

COOPERATION

The Union and its members recognize that it is the responsibility of the Plant Protection employees to familiarize themselves with the plant rules established by the Employer and to faithfully report all violations thereof. The Union and its members further agree that the Plant Protection employees shall discharge their assigned duties impartially and without regard to any Union or nonunion affiliation or activities of any employee or employees, and that failure to do so will constitute cause for disciplinary action.

146 Aluminum Company of America, Detroit, Michigan, and International Union UAW—Amalgamated Plant Protection Local Union No. 114 (CIO)

9. Plant Protection and Military Organization of Plant Guard Forces

It is realized by the parties hereto that the adequate and continuous protection of the Company's Plant, Premises and Products is of paramount importance, and each party agrees that there shall be no interference whatsoever in the maintenance of satisfactory Plant Protection so long as required by the Company, and Plant Protection Employees covered by this agreement shall continue to perform their duties irrespective of a strike of other unions or employees at the Company's Plant.

Where necessary to instruct Plant Protection Employees as to their duties in connection with suspected plant sabotage or thievery, and such instructions are deemed confidential by the Company or any Public Officer, such instructions and information shall not be disclosed by them to the Union, Union officers, or others. Any such necessary instructions shall be given directly to each individual guard by a direct representative of the Management. Any Plant Protection Employee violating this rule will be subject to discipline, up to and including dismissal.

For the duration of the war, should any difference arise between the Company and the Union as to the meaning or application of the provisions of this Agreement as to hours of work, rates of pay, or conditions of employment, or should any trouble or controversy of any kind arise in, or with respect to, the plant
147 as between the Company and the Union, there shall not, on account or by reason of such difference, controversy, or trouble, be any strike, suspension, or slow-up of work at the plant, either prior to or during efforts to settle such difference, controversy, or trouble, or after the settlement thereof, but all such differences, controversies, or troubles shall be settled with the utmost dispatch, and only in the manner set forth under Grievance Procedure.[1]

Columbia Steel Company, Torrance Works, California and United Steel Workers of America

Section 2. Recognition.

* * * * *

The Union recognizes that it is the responsibility of the Plant Protection employees to familiarize themselves with the shop rules

[1] The above selection from a contract claims particular attention since it was executed by the local union involved in the Federal Motor case.

established by the Company and to faithfully report all violations thereof. The Union agrees that the Plant Protection employees shall discharge their duties, as assigned to them, impartially and without regard to any union or nonunion affiliation of any employee of the Company, and that failure to do so constitutes sufficient cause for discipline up to and including dismissal, and for reporting such cases to the proper representatives of the War Department.

The Union recognizes that it is the responsibility of the Plant Protection employees to guard and protect the employees and their property while on plant property; the plants, premises, material, facilities, and property of the Company at all times and to enforce the Company's rules under all circumstances. The Union agrees that its members shall faithfully dis-
148 charge this responsibility, and during the life of this Agreement that it will not cause or permit its members to cause, nor will any member of the Union take part in any strike, sit-down, stay-in, stoppage of work, or other interference with or refusal to perform their duty regularly assigned to them. The Union further agrees, in the event of any controversy between the Company and any other group or organization of its employees, resulting or threatening to result in any strike, stoppage of work, or other interference with production, that its members will continue to report for duty, remain at their posts, and in the regular manner, discharge the duties assigned to them. The Company reserves the right to discipline, including discharge, in accordance with Section 9, any employees who violate any provision of this section.

American Smelting & Refining Company—Federated Metals Division—Newark Plant and International Union of Mine, Mill and Smelter Workers (CIO)

ARTICLE III

POLICY OF THIS AGREEMENT

* * * * *

SECTION 3. The Union recognizes and agrees that the Employees covered by this agreement have a special, confidential, and direct responsibility to the Company requiring—

(a) That such Employees completely and diligently devote themselves to the interest of the Company.

(b) That such Employees familiarize themselves with and comply with all police, property-protection, and safety rules, regulations, and orders relating to the Plant and all directions and instructions of the Management of the Company relating to the Plant.

(c) That such Employees enforce said rules, regulations, orders, directions, and instructions and faithfully report to the Management of the Company all infringements or violations thereof and all other information as to activities detrimental to the Company, its plants, or its employees.

(d) That such Employees keep confidential and do not divulge to any person other than the Management of the Company all information obtained from any source having any bearing upon the Plant, its operations, or personnel.

(e) That such Employees fulfill and discharge their duties diligently, conscientiously, and impartially and without any regard to any Union or nonunion affiliation of any employee or employees of the Company or any other person or persons, and shall not engage in union activity on Company time.

(f) That such Employees conduct themselves at all times, both on and off duty, in accordance with the confidence and trust reposed in them.

(g) That such Employees at no time engage in any strike, mass-quit, work-stoppage, slow-down, sit-down, picketing, or any other conduct which may, in any way, interrupt or interfere with production at the Plant and that they will at all times fulfill and discharge their duties without regard to any strike, mass-quit, work-stoppage, slow-down, sit-down, picketing, or any other interruption of or interference with production at the Plant.

The Union agrees that failure on the part of any employee or employees to observe and fulfill such responsibilities shall be just cause for discipline by the Company up to and including summary dismissal, except that such action by the Company may be subject to consideration by the Grievance Committee.

SECTION 4. The Union agrees that it will not cause or permit its members to cause, nor will any member of the Union take part in, any strike, mass-quit, work stoppage, slow-down, sit-down, picketing, or any other interruption of, or interference with, production of the Plant, or otherwise violate the foregoing Section 2 hereof, and the Union further agrees that in the event of any strike, mass-quit, work stoppage, slow-down, sit-down, picketing, or any other interruption or interference with production of the Plant caused or engaged in by other employees of the Company, the Employees who are members of the Union will continue to report for duty, remain at their posts, and, in the regular manner, discharge the duties assigned to them. During the term of this Agreement, the Company shall not engage in any lock-out of Employees.

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APPENDIX C

BOARD CASES INVOLVING PLANT PROTECTION EMPLOYEES WHICH APPROVE THE BARGAINING PATTERN INVOLVED HEREIN

Matter of American Forge Company	44 N. L. R. B. 826.
Matter of Chrysler Corporation	44 N. L. R. B. 881.
Matter of General Motors Corp	44 N. L. R. B. 1061.
Matter of The Maytag Company	44 N. L. R. B. 1265.
Matter of McCormick Works	44 N. L. R. B. 1332.
Matter of Campbell Soup Company	45 N. L. R. B. 6.
Matter of Johns-Manville Products Company	45 N. L. R. B. 33.
Matter of The Sherwin-Williams Defense Corporation	45 N. L. R. B. 46.
Matter of Westinghouse Electric Mfg. Co.	45 N. L. R. B. 51.
Matter of Bethlehem Steel Company	45 N. L. R. B. 92.
Matter of Royal Typewriter Company, Inc.	45 N. L. R. B. 291.
Matter of The United States Cartridge Company	45 N. L. R. B. 350.
Matter of Otis Elevator Company	45 N. L. R. B. 419.
Matter of Curtiss-Wright Corporation	45 N. L. R. B. 592.
Matter of Westinghouse Electric & Mfg. Co.	45 N. L. R. B. 776.
Matter of Curtiss-Wright Corporation	45 N. L. R. B. 1288.
Matter of Todd-Bath Iron Shipbuilding Corp.	45 N. L. R. B. 1367.
Matter of Fruehauf Trailer Company	46 N. L. R. B. 389.
Matter of Chrysler Corporation	46 N. L. R. B. 441.
Matter of Bethlehem Steel Company	46 N. L. R. B. 794.
Matter of Combustion Engineering Company, Inc.	46 N. L. R. B. 937.
Matter of Western Cartridge Company	46 N. L. R. B. 948.
Matter of Julius Petersen	46 N. L. R. B. 1049.
Matter of Puget Sound Bridge and Dredging Company	46 N. L. R. B. 1071.
Matter of Cramp Shipbuilding Company	46 N. L. R. B. 1186.
Matter of Chrysler Corporation, Evansville Ordnance Plant	47 N. L. R. B. 240.
Matter of Youngstown Sheet and Tube Company (Indiana Harbor Plant)	47 N. L. R. B. 391.
Matter of Westclox Division, General Time Instruments Corp.	47 N. L. R. B. 418.
Matter of Pressed Steel Car Company, Inc.	47 N. L. R. B. 425.
Matter of Walworth Company, Inc.	47 N. L. R. B. 512.
Matter of W. Sherman Burns	47 N. L. R. B. 610.
Matter of Republic Aircraft Products Division	47 N. L. R. B. 892.
Matter of Packard Motor Car Company	47 N. L. R. B. 902.
Matter of Ford Motor Company	47 N. L. R. B. 929.
152 Matter of Ford Motor Company, Highland Park Plant	47 N. L. R. B. 946.
Matter of Lord Mfg. Company	47 N. L. R. B. 1032.
Matter of Rockbestos Products Corporation	47 N. L. R. B. 1312.
Matter of Bethlehem Steel Corporation and Bethlehem Steel Company	47 N. L. R. B. 1330.
Matter of J. A. Zurn Manufacturing Co., West 19th St. Div.	48 N. L. R. B. 109.
Matter of The New Britain Machine Company	48 N. L. R. B. 263.
Matter of International Harvester Company	48 N. L. R. B. 273.
Matter of Hurley Machine Division of Electric Household Utilities Corporation	48 N. L. R. B. 295.
Matter of Metalloy Corporation	48 N. L. R. B. 408.

Matter of Ford Motor Company, Willow Run Bomber Plant	48 N. L. R. B. 413.
Matter of Chrysler Corporation	48 N. L. R. B. 512.
Matter of Timm Aircraft Corporation	48 N. L. R. B. 522.
Matter of California Packing Corporation	48 N. L. R. B. 693.
Matter of General Electric Company	48 N. L. R. B. 1395.
Matter of Donner-Hanna Coke Corporation	49 N. L. R. B. 1.
Matter of Briggs Manufacturing Co.	49 N. L. R. B. 57.
Matter of Textileather Corporation	49 N. L. R. B. 199.
Matter of The Williams J. Burns International Detective Agency	49 N. L. R. B. 385.
Matter of Ford Motor Company	49 N. L. R. B. 492.
Matter of Chrysler Corporation	49 N. L. R. B. 794.
Matter of Miami Shipbuilding Corporation	49 N. L. R. B. 803.
Matter of Briggs Indiana Corporation	49 N. L. R. B. 920.
Matter of The Murray Corporation of America	49 N. L. R. B. 925.
Matter of Durez Plastics & Chemicals, Inc.	49 N. L. R. B. 1061.
Matter of Warner Gear Division	49 N. L. R. B. 1122.
Matter of E. I. Du Pont de Nemours and Company	49 N. L. R. B. 1125.
Matter of General Cable Corporation	49 N. L. R. B. 1212.
Matter of Graver Tank and Mfg. Corp.	49 N. L. R. B. 1217.
Matter of Rockland Light & Power Company	49 N. L. R. B. 1398.
Matter of Lennox Furnace Company	50 N. L. R. B. 80.
Matter of Intercontinental Aircraft Corporation	50 N. L. R. B. 99.
Matter of Bethlehem Steel Company	50 N. L. R. B. 172.
Matter of Burns International Detective Agency	50 N. L. R. B. 219.
Matter of Aluminum Company of America	50 N. L. R. B. 233.
Matter of United States Cartridge Company	50 N. L. R. B. 358.
Matter of Maryland Drydock Company	50 N. L. R. B. 363.
Matter of Chicago District Electric Generating Corp.	50 N. L. R. B. 376.
Matter of Aluminum Company of America	50 N. L. R. B. 380.
Matter of Allen B. Du Mont Laboratories, Inc.	50 N. L. R. B. 437.
Matter of Electric Boat Company	50 N. L. R. B. 438.
Matter of City National Bank and Trust Company of Chicago	50 N. L. R. B. 516.
153 Matter of Firestone Tire and Rubber Company of Calif.	50 N. L. R. B. 679.
Matter of Allied Chemical & Dye Corporation	50 N. L. R. B. 700.
Matter of Bethlehem Steel Company	50 N. L. R. B. 713.
Matter of Aluminum Corporation of America	50 N. L. R. B. 963.
Matter of Arvey Corporation	50 N. L. R. B. 999.
Matter of Continental Can Company	50 N. L. R. B. 1025.
Matter of Taylor Forge & Pipe Works	51 N. L. R. B. 48.
Matter of Wenatchee Alloys, Inc.	51 N. L. R. B. 229.
Matter of Consolidated Steel Corporation, Ltd.	51 N. L. R. B. 333.
Matter of Howard Aircraft Corporation	51 N. L. R. B. 386.

Matter of American Steel and Wire Company	51 N. L. R. B. 449
Matter of United States Rubber Company	51 N. L. R. B. 532
Matter of the Baldwin Company	51 N. L. R. B. 868
Matter of Youngstown Sheet and Tube Company	51 N. L. R. B. 1261
Matter of Bravo Corporation	52 N. L. R. B. 322
Matter of Armour and Company of Delaware	52 N. L. R. B. 330
Matter of Todd Shipyards Corporation	52 N. L. R. B. 356
Matter of General Cable Corporation	52 N. L. R. B. 393
Matter of Hudson Motor Car Company	52 N. L. R. B. 399
Matter of American Steel Foundries	52 N. L. R. B. 432
Matter of Caterpillar Tractor Co.	52 N. L. R. B. 437
Matter of The Standard Oil Company	52 N. L. R. B. 570
Matter of American Bantam Car Company	52 N. L. R. B. 574
Matter of United States Rubber Company	52 N. L. R. B. 587
Matter of Atmospheric Nitrogen Corporation	52 N. L. R. B. 618
Matter of Budd Wheel Company	52 N. L. R. B. 666
Matter of Indiana and Michigan Electric Company	52 N. L. R. B. 670
Matter of Foote Brothers Gear and Machine Corporation	52 N. L. R. B. 801
Matter of Jones & Laughlin Steel Corporation	52 N. L. R. B. 973
Matter of Anaconda Wire and Cable Company	52 N. L. R. B. 1028
Matter of Bundy Tubing Company	52 N. L. R. B. 1224
Matter of Diamond Magnesium Company	52 N. L. R. B. 1233
Matter of Bethlehem Steel Company	52 N. L. R. B. 1265
Matter of The Holtzer-Cabot Electric Co.	52 N. L. R. B. 1469
Matter of Carnegie-Illinois Steel Corporation	53 N. L. R. B. 65
Matter of Bohn Aluminum and Brass Corporation	53 N. L. R. B. 231
Matter of Fairchild Engine and Airplane Corporation	53 N. L. R. B. 286
Matter of Aluminum Company of America	53 N. L. R. B. 482
Matter of Nebraska Defense Corporation	53 N. L. R. B. 716
Matter of Kellet Aircraft Corporation	53 N. L. R. B. 1038
Matter of Andover Motors Corporation	53 N. L. R. B. 1041
Matter of United States Rubber Company	53 N. L. R. B. 1067
Matter of Pittsburgh Plate Glass Company	53 N. L. R. B. 1181
Matter of The Missouri Valley Bridge and Iron Company	53 N. L. R. B. 1207
Matter of Ford Motor Company	54 N. L. R. B. 82
154 Matter of Embry-Riddle Company	54 N. L. R. B. 364
Matter of Glenn L. Martin-Nebraska Company	54 N. L. R. B. 424
Matter of Funsteel Metallurgical Corporation	54 N. L. R. B. 438
Matter of Goodyear Aircraft Corporation	54 N. L. R. B. 844
Matter of Extruded Metals Defense Corporation	54 N. L. R. B. 889
Matter of Farrel Birmingham Company, Inc.	54 N. L. R. B. 943
Matter of United States Aluminum Company	54 N. L. R. B. 1067
Matter of Bell Aircraft Corporation	54 N. L. R. B. 1093

Matter of Allis-Chalmers Manufacturing Company ..... 54 N. L. R. B. 1129.
Matter of American Smelting & Refining Company ..... 54 N. L. R. B. 1358.
Matter of Pacific Pump Works ..... 54 N. L. R. B. 1458.
Matter of William J. Burns International Detective Agency ..... 54 N. L. R. B. 1489.
Matter of American Finishing Company ..... 54 N. L. R. B. 1567.
Matter of Bell Aircraft Corporation ..... 54 N. L. R. B. 1578.
Matter of Sprague Specialities Company ..... 55 N. L. R. B. 47.
Matter of Miami Shipbuilding Corporation ..... 55 N. L. R. B. 123.
Matter of Phillips Petroleum Company ..... 55 N. L. R. B. 192.
Matter of Commonwealth Edison Company ..... 55 N. L. R. B. 465.
Matter of American Steel Foundries ..... 55 N. L. R. B. 960.
Matter of North American Aviation, Inc ..... 55 N. L. R. B. 1018.
Matter of Ryan Aeronautical Co ..... 55 N. L. R. B. 1171.
Matter of General Motors Corporation ..... 55 N. L. R. B. 1393.
Matter of The Murray Corporation of America ..... 55 N. L. R. B. 1434.
Matter of Great Lakes Corporation ..... 56 N. L. R. B. No. 49.
Matter of New Jersey Shipbuilding Corporation ..... 56 N. L. R. B. No. 63.
Matter of Berkey and Gay Furniture Co ..... 56 N. L. R. B. No. 111.
Matter of The Spang Chalfant Division of The National Supply Company ..... 56 N. L. R. B. No. 123.
Matter of The New York Quinine and Chemical Works, Inc ..... 56 N. L. R. B. No. 145.
Matter of Defoe Shipbuilding Company ..... 56 N. L. R. B. No. 149.
Matter of The National Supply Company ..... 56 N. L. R. B. No. 151.
Matter of Bankers Trust Company (Armed, non-military) ..... 56 N. L. R. B. No. 189.
Matter of Wilson and Company, Inc ..... 56 N. L. R. B. No. 220.
Matter of Bethlehem Steel Company ..... 56 N. L. R. B. No. 248.
Matter of Monsanto Chemical Company ..... 56 N. L. R. B. No. 254.
Matter of Airplane Mfg. and Supply Corporation ..... 56 N. L. R. B. No. 258.
Matter of Columbian Rope Company ..... 56 N. L. R. B. No. 282.
Matter of Standard Oil Company of N. J ..... 56 N. L. R. B. No. 289.
Matter of Swift and Company ..... 56 N. L. R. B. No. 307.
Matter of Ralston-Purina Company ..... 57 N. L. R. B. No. 13.
Matter of Bethlehem-Hingham Shipyards, Inc ..... 57 N. L. R. B. No. 37.
Matter of Standard Oil Co. of N. J ..... 57 N. L. R. B. No. 108.
Matter of Wyatt Metal and Boiler Works ..... 57 N. L. R. B. No. 118.
Matter of The Northern Coal and Dock Co. et al ..... 57 N. L. R. B. No. 122.
Matter of Duquesne Light Company ..... 57 N. L. R. B. No. 129.
Matter of Aluminum Co. of America ..... 57 N. L. R. B. No. 182.
Matter of Cincinnati Gas and Electric Company ..... 57 N. L. R. B. No. 199.
Matter of Union Stockyard and Transit Company ..... 57 N. L. R. B. No. 244.
Matter of National Foundry and Machine Company ..... 57 N. L. R. B. No. 249.
Matter of Goodyear Aircraft Corporation ..... 57 N. L. R. B. No. 286.

Matter of Southport Petroleum Company of Delaware	58 N. L. R. B. No. 9.
Matter of Swift and Company	58 N. L. R. B. No. 22.
Matter of Cudahy Packing Company	58 N. L. R. B. No. 37.
Matter of Radio Corporation of America	58 N. L. R. B. No. 55.
Matter of Aluminum Company of America	58 N. L. R. B. No. 140.
Matter of Dade Drydock Corporation	58 N. L. R. B. No. 165.
Matter of Crucible Steel Company of America	58 N. L. R. B. No. 195.
Matter of Pacific Tube Company	58 N. L. R. B. No. 203.
Matter of National Carbide Corporation	58 N. L. R. B. No. 261.
Matter of Mallinckrodt Chemical Works	58 N. L. R. B. No. 282.
Matter of Plankington Packing Company	59 N. L. R. B. No. 12.
Matter of Gar Wood Industries, Inc.	59 N. L. R. B. No. 17.
Matter of Iowa Packing Company	58 N. L. R. B. No. 25.
Matter of The Firestone Tire and Rubber Company	59 N. L. R. B. No. 113.
Matter of Armour and Company	59 N. L. R. B. No. 456.
Matter of International Harvester Company	59 N. L. R. B. No. 168.
Matter of Miami Shipbuilding Corporation	59 N. L. R. B. No. 196.

155 In United States Circuit Court of Appeals

Order granting motion to file brief and denying petition for rehearing

Filed Feb. 6, 1945

The Motion of United Steelworkers of America filed January 8, 1945, for leave to intervene and file a brief is granted; the brief of International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO) filed January 8, 1945, as amicus curiae, is allowed; and the petition to rehear filed by National Labor Relations Board January 8, 1945, is denied.

In United States Circuit Court of Appeals

Order amending opinion

Filed Feb. 10, 1945

It is ordered by the court that its opinion, filed in these causes on December 8, 1944, be and is hereby amended as follows: (1) by striking from the second sentence of the fourth full paragraph appearing on page 2 thereof the subsection designation "a" and by substituting therefor the numeral "2" so that the sentence as amended now reads, "Here the Board must give consideration to Sec. 2 (2) and (3)"; and (2) by striking from the first sentence of the third full paragraph on page 7 thereof, the

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section designation "2" and substituting therefor the numeral "9," so that the sentence as amended now reads, "The Board, under Sec. 9 (b) had a positive duty to perform in the interest of the public."

Certified copy of order granting certiorari

Filed June 4, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

157 In United States Circuit Court of Appeals

Order restoring case to calendar

Filed October 5, 1945

Pursuant to mandate of the Supreme Court, filed July [illegible], 1945, it is ordered that this case be restored to the open calendar for further consideration of the alleged changed circumstances with respect to the demilitarization of the employees involved and the effect thereof on the Board's orders.

158 In United States Circuit Court of Appeals

Motion of National Labor Relations Board for decree enforcing its order

Filed Feb. 4, 1946

Comes now the National Labor Relations Board by David A. Morse, its general counsel, and moves this Court to enter a decree enforcing the order of the Board issued against the Jones & Laughlin Steel Corporation on December 2, 1943, and in support of said motion alleges:

1. On May 3, 1943, the National Labor Relations Board determined that all patrolmen, watchmen, and firemen, including dump laborers employed by the Jones & Laughlin Steel Corporation, hereinafter called the Company, at its Otis Works, constitute a unit appropriate for collective bargaining and directed an election for the purpose of determining whether or not
159 these employees desired to be represented by United Steelworkers of America, affiliated with the Congress of Industrial Organizations, hereinafter called the Union, for the purposes of collective bargaining (49 N. L. R. B. 394).

2. On May 27, 1943, at the election conducted pursuant to the aforesaid direction, out of 56 eligible voters, 52 cast ballots, of which 37 were cast for the Union and 15 against the Union (R. 47).

3. On June 5, 1943, the Board certified the Union as the exclusive representative of the above-described employees for the purposes of collective bargaining (R. 47).

4. On December 2, 1943, the Board issued its decision finding that on May 28, 1943 the Union requested the Company to bargain collectively with it as the exclusive representative of the aforesaid employees but that the Company on June 23, 1943, declined to bargain stating that "it is our intention to use every legal means available to us to have plant guards classified with Supervisors in respect to collective bargaining," determining that this constituted a refusal to bargain within the meaning of Section 8 (5) of the Act, and ordering the Company to cease and desist from its unfair labor practices and bargain collectively with the Union (53 N. L. R. B. 1046).

5. On December 8, 1944, this Court refused to enforce the Board's order on the ground that since the employees in question were militarized, it would be against public policy to require the Company to bargain with the Union as their representative (146 F. 2d 718).

160 6. On June 4, 1945, the Supreme Court of the United States granted a writ of certiorari to review the aforesaid judgment of this Court, vacated the judgment, and remanded the case to this Court "for further consideration of the alleged changed circumstances with respect to the demilitarization of the employees involved and the effect thereof on the Board's order" (325 U. S. 838). The Company's petition to the Supreme Court for rehearing upon the petition for certiorari was denied October 8, 1945 (65 S. Ct. 13).

7. The parties hereto on January 17, 1946 entered into a stipulation stating that all the guards employed at the Company's Otis Works were demilitarized on May 29, 1944; that the Company now employs 46 men in its plant guard force at the Otis Works, i. e., one police captain, 6 lieutenants and 39 patrolmen, all of whom, with possibly a few exceptions, have been employed as members of the Company's force of plant guards since a time prior to August 5, 1942, which was the date upon which the plant guards were militarized; and that the qualifications, strength, functions and duties of the plant guard force have continued the same since prior to August 5, 1942, with the exception of the added obligations which existed during the period of militarization.

8. It thus appears that the obstacles which this Court believed warranted it in refusing to enforce the Board's order have now been removed.

161 Wherefore, the Board prays this Honorable Court that it enter a decree enforcing in whole the order entered by the Board against the Company on December 2, 1943, as prayed in the Board's petition for enforcement heretofore filed in this Court.

NATIONAL LABOR RELATIONS BOARD,
By DAVID A. MORSE, *General Counsel.*

162 In United States Circuit Court of Appeals

Stipulation, upon remand from the Supreme Court of the United States

Filed Feb. 4, 1946

And now, to wit, this 17th day of January 1946, it is stipulated by counsel that the following may be accepted by the Court as facts; in its consideration of this matter under the remand of this case under an Order entered in the Supreme Court of the United States on June 4, 1945; it being understood that by signing this stipulation neither party admits any such fact, for any other purpose, and that each party reserves the right to contend that any such fact is incompetent, or irrelevant to the issues now before the Court:

First. All of the members of the force of plant guards employed at the Otis Works of Jones & Laughlin Steel Corporation, in Cleveland, Ohio, were "militarized," i. e., sworn and enrolled as members of the Auxiliary Military Police of the Army of the United States on August 5, 1942. They were "de-
163 militarized," pursuant to changes in the plant security program, by a letter addressed to the Corporation by an officer of the Army Service Forces, which was dated May 29, 1944, and delivered shortly afterwards, and of which a true copy is attached hereto, marked "Exhibit A" and made part hereof. Fifty-one "Certificates of Meritorious Conduct"—one for each member of the guard force—were enclosed with said letter and were shortly distributed among the guards, since which time none of the guards has been a member of the Auxiliary Military Police.

Second. 1. The force of plant guards had been employed and organized at some time long before the "militarization" of August 5, 1942; and it has continued to exist ever since the "demilitarization" of May 29, 1944. It consists at present of forty-six men: i. e., one police captain, six lieutenants, and thirty-nine patrolmen, all of whom, with possibly a few exceptions, have been employed as members of the force since a time prior to August

5, 1942. When and as qualified men become available, this force will be increased to a normal strength of about sixty men.

2. The plant guard force is maintained as a separate branch or department of the Otis Works. Its officers have offices and its members have quarters or barracks in the Works which are entirely separate from those occupied by other employees. The training, discipline, work and activities of the guard force are directed wholly by the police captain and under him the lieutenants. The police captain reports and is responsible directly to the Corporation's Director of Plant Security, in Pittsburgh, and to the executive officer of the Corporation who has general charge of the Works.

3. Every member of the guard force is and was required to be an American citizen, physically sound and fit, possessed of
164 at least a high school education, and of the highest personal character and reputation. Men having past military or police experience are preferred, and with a very few exceptions all members of the guard force have had such experience.

4. The police captain is a Deputy Sheriff of Cuyahoga County, Ohio. All members of the plant guard force are commissioned, sworn and bonded as private policemen of the City of Cleveland, under Section 188 of the Cleveland Municipal Code, 1924, and as such are members of the municipal police force and have and exercise the legal powers of peace officers in their work as plant guards.

5. When on duty, all members of the guard force are required to wear police badges, and uniforms of a military style, and they are armed with police revolvers and clubs or batons, and, when the occasion requires, with other arms and police equipment.

6. The principal functions of the guard force include the following:

(a) To protect the real and personal property of the Corporation which is comprised by the Otis Works, and the property of employees and other in the Works, from any damage, injury, theft, or trespass, which might otherwise be caused by fire, storm or other casualty, or by any act of trespass, or sabotage, or other wrongful act.

(b) To maintain peace and good order at all times among all others employed in the Otis Works, by demanding and enforcing obedience to the safety and other rules of the Corporation, and to all applicable public laws and ordinances, and by preventing or arresting any violation thereof or any breach of the peace in or near the Works.

(c) To detect and if possible prevent any criminal act in or near the Works; to investigate and report, in confidence to their

165 superiors, all crimes, suspected crimes, irregularities and casualties occurring in the Works; and to assist in the criminal prosecution of any person who may lawfully be charged to have committed or attempted any such crime.

7. The Otis Works is in two separate parts; the "Riverside Plant" and the "Lakeside Plant." The Riverside Plant is a tract of about 335 acres, bounded by the Cuyahoga River, Jennings Road, and Clark Avenue, in an outlying industrial district of the City of Cleveland, on which are located more than one hundred structures and improvements of an aggregate value of millions of dollars. These include raw material yards, power houses, blast and open hearth furnaces, rolling and finishing mills, annealing and finishing furnaces, and all of the other machinery required in a fully integrated steel works. At present, and normally, about 3,500 individuals are employed in productive labor and maintenance work at this plant. The Lakeside Plant is a tract of about thirty-three acres of land, situate between Lakeside Avenue and the shore of Lake Erie in an industrial district in the City of Cleveland, on which are located a power house, five open hearth steel furnaces, a steel foundry, a steel plate rolling mill, and a variety of appurtenant structures and improvements. The Lakeside Plant which normally employs several hundred productive laborers, has recently been shut down, and now affords employment for only about fifty such laborers.

8. Because of the magnitude and other characteristics of the Otis Works, its police protection by the ordinary police of the City of Cleveland is not practical or feasible; and, as a result, for a great many years, the police protection of the Works and the enforcement of law, peace and good order therein has been delegated wholly to the plant guard force. For similar reasons,
166 the work of preventing and extinguishing fires has been in large part the responsibility of the guard force, rather than that of the municipal fire department.

9. During the calendar year 1945, the work of the plant guard force included the following:

63 employees apprehended under the influence of liquor.
3 employees apprehended sleeping.
7 arrests made: one, assault and battery; one, carrying concealed weapons; two, rape; two, house breaking and larceny (one of the latter was discharged); one incest (discharged); all of the others were convicted.
18 investigations made of stolen property from lockers, etc.
3 investigations made of stolen property from automobiles.
4 investigations made of automobiles being damaged in parking lots.

3 investigations made of fatal accidents.
3 investigations made of natural deaths of employees while at work.
10 investigations made of employees fighting in plants.
2 employees escorted from plant for threatening Foremen.
7 employees escorted from plant for refusing to work.
11 employees apprehended for gambling while at work.
2 open hearth explosions investigated—employees injured.
2 departmental strikes.
19 fires attended.

Third. The qualifications, strength, functions and duties of the plant guard force during the period of their "militarization" were not materially different from those described in article Second of this stipulation, or from those which existed before
167 August 5, 1942, except that, during such period of "militarization," the plant guards were subject, in addition to their obligations as police, to the obligation of a military oath and to the applicable obligations of military law, that their drills were conformed to standards established by the Army, and that they were required to inform themselves of the contents of various communications published or circulated by authority of the Army.

(S) A. NORMAN SOMERS,
Assistant General Counsel,
National Labor Relations Board.

(S) JOHN C. BANE, JR.
REED, SMITH, SHAW & McCLAY,
Attorneys for Jones & Laughlin Steel Corporation.

168 *Exhibit A to stipulation*

ARMY SERVICE FORCES,
PRODUCTION SECURITY DISTRICT OFFICE,
CUYAHOGA BUILDING, 216 EAST SUPERIOR AVENUE,
Cleveland 1, Ohio, 29 May 1944.

JONES & LAUGHLIN STEEL CORPORATION,
3341 Jennings Road, Cleveland, Ohio.

Attention of Mr. V. H. Lawrence.

GENTLEMEN: Pursuant to recent changes in the plant security program, of which you are cognizant, you are hereby notified of the demilitarization of your Auxiliary Military Police guard force.

Inclosed you will find Certificates of Meritorious Conduct which are to be presented to the members of your present guard force upon return to you of the official identification cards which they now hold. These cards are the property of the War Department and it is requested that you in turn forward them to this office with the least possible delay.

Additionally, it is requested that you give one of the inclosed postal cards to each man. This will be filled out by the individual and returned to this office as soon as he is transferred to another department or his new place of employment is known.

This opportunity is taken to express the appreciation of this office for the excellent cooperation you have extended during the period your guard force was enlisted in the Auxiliary
169 Military Police. This change in policy in no way affects the importance of your facility to the War Effort, and it is assumed that you will accept the increased responsibilities which the curtailment of our program implies.

Very truly yours,

(S) G. J. Hales,
G. J. Hales,
Major, Ord. Dept., District Chief.

2 Incls:
Incl. 1—Honorable Discharges (51).
Incl. 2—Postal Cards (51).

170 In United States Circuit Court of Appeals

Cause argued and submitted

Filed Feb. 4, 1946

Before Hicks, Simons, and Allen, JJ.

This cause is argued by Ruth Weyland for Petitioner and by John C. Bane, Jr., for Respondent and is submitted to the court.

In United States Circuit Court of Appeals

Decree denying enforcement of Board's order

Filed April 4, 1946

On petition to enforce order of the National Labor Relations Board.

This cause came on to be heard on the transcript of record from the National Labor Relations Board, and the mandate of the Supreme Court of the United States, and was argued by counsel.

On consideration whereof, It is now ordered, adjudged, and decreed by this Court that the application to enforce the order of the National Labor Relations Board on review is denied.

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No. 9730

United States Circuit Court of Appeals, Sixth Circuit

NATIONAL LABOR RELATIONS BOARD, petitioner

v.

JONES & LAUGHLIN STEEL CORPORATION, RESPONDENT

Petition for Enforcement of an Order of the National Labor Relations Board

Opinion

April 4, 1946

Before HICKS, SIMONS, and ALLEN, Circuit Judges.

ALLEN, Circuit Judge. This is a second hearing of this case, which was instituted by the filing of a petition for enforcement by the National Labor Relations Board. The Board had found the respondent guilty of violating § 8 (1) and § 8 (5) of the National Labor Relations Act (29 U. S. C. §§ 151–166). The only unfair labor practice charged and found to exist was that the respondent had refused to bargain collectively with the United Steel Workers of America (C. I. O.), hereinafter called the Union, as representative of its plant guards. Respondent had theretofore bargained collectively with the Union and had signed a contract by which the Union and the respondent agreed in substance that the persons to whom the contract should apply should not include "foremen or assistant foremen * * *, watchmen, salaried employees and nurses." During the life of the contract the Union petitioned the Board for investigation and certification of representatives for the plant guards, that is, for watchmen. The Board held that the patrolmen, watchmen, firemen and dump laborers constituted an appropriate bargaining unit, and held an election in which the votes in favor of the C. I. O. predominated. The Union already represented all of the respondent's production and
172 maintenance employees, and the respondent upon request refused to negotiate with the Union as representative of its plant guards, claiming that they fall within the statutory definition of employer [29 U. S. C., Sec. 152 (2)], which includes "any person acting in the interest of an employer, directly or indirectly * * *" and therefore are not entitled to the rights of employees under 29 U. S. C., Sec. 157, including the right of self-organization and collective bargaining. The respondent also contended that the plant guards, since they were sworn in as mem-

bers of the military police and were under the control of the United States Army, could not be represented by any union. It therefore refused to bargain with the Union. The Board found that this refusal constituted an unfair labor practice, issued the usual order, and filed a petition for enforcement.

This court, in view of the conceded membership of these men in the military police, denied enforcement of the order. 146 Fed. (2d) 718. The court pointed out that when they were inducted into the unions and became subject to their rules and decisions, the plant guards assumed obligations to the unions and their fellow-workers which might well, in given circumstances, bring them in conflict with their obligation to their employers and their paramount duty as militarized police of the United States Government.

Subsequent to the judgment in this court the guards were demilitarized, and this fact was brought to the attention of the Supreme Court on certiorari proceedings filed on behalf of the Board. The case was remanded to this court "for further consideration of the alleged changed circumstances with respect to the demilitarization of the employees involved, and the effect thereof on the Board's order." An extensive stipulation filed upon remand from the Supreme Court also reveals that all the plant guards in question are members of the Cleveland police force.

The respondent contends that under § 10 (e) of the National Labor Relations Act [29 U. S. C., § 160, (e)], no fact not disclosed in the transcript can be regarded by the reviewing court, for the decision on review is required to be made and entered upon the pleadings, testimony and proceedings as set forth in the transcript, and that we therefore can neither consider the fact of demilitarization nor the public police functions exercised by the plant guards.

The Supreme Court, in National Labor Relations Board v. Newport News Shipbuilding & Dry Dock Co., 308 U. S. 241, 249,
173 250, held that the National Labor Relations Act "expressly deprives the reviewing court of power to consider" facts brought to its attention in a brief after hearing. "The case," the Supreme Court declared, "must be heard on the record as certified by the Board. The appropriate procedure to add facts to the record as certified is prescribed in § 10 (e) of the Act."

In any case, it is our duty to comply with the mandate of the Supreme Court. Here the fact of demilitarization was presented in a petition for certiorari, which perhaps differentiates the case from National Labor Relations Board v. Newport News Shipbuilding & Dry Dock Co., supra. We therefore consider the controversy as if evidence on the question of demilitarization of the plant guards, and also on the facts embodied in the stipulation, had been presented at the hearing before the Board. So consid-

cred, we think our original conclusion was correct and adhere to it. The petition for enforcement must be denied.

As pointed out in our former opinion, the plant protection employees are employees when considered in their relationship to their employer; but when their relationship to their fellow-employees is examined together with the drastic police powers which they exercise over their fellows, they can hardly be considered in the same category. In their first relationship they are entitled to bargain collectively. The precise question here is not whether the plant guards should be permitted to organize, but whether the peculiar classification into which they fall makes it improper for the Board to permit their organization by the same union which represents the production employees. As revealed by the stipulation, the plant guards, even though their military service has ceased, perform a service which in its public aspect is closely analogous to that of the military police. Under the statutes of Ohio, of which we take judicial notice, the plant guards are peace officers (§ 13432-1, General Code of Ohio), charged on behalf of the public with preventing injury to property, breaches of the peace and criminal offenses, including misdemeanors and felonies. These particular plant guards are also commissioned policemen, the police captain being a deputy sheriff of Cuyahoga County, Ohio, and the other members of the force commissioned, sworn and bonded as private policemen of the City of Cleveland, under § 188 of the Cleveland Municipal Code, 1924. Counsel for the Board admits that the plant guards are part of the municipal police force and have and exercise the legal powers of police officers. During the year 1945 they not only made ordinary investigations of
174 thefts, accidents, etc., on the respondent's premises, but they made arrests for major felonies.

With the exception of the police captain, who is a state officer, the plant guards are municipal police. The municipality is an arm of the state, and the state is entitled to rely upon these guards to perform state police duties. In Ohio the policeman of a municipality is held to be a public officer. City of Cleveland v. Luttner, 92 Ohio St. 493, 494. The doctrine that the municipality is an agency of the state in matters affecting the public health and safety is enforced in Ohio even as to charter cities, which under the State Constitution have all powers of local self-government. Niehaus v. State ex rel. Board of Education, 111 Ohio St. 47.

It is the usual rule that special policemen are public officers performing public duties. Thornton v. Missouri Pacific Rd. Co., 42 Mo. App. 58; Dempsey v. New York City & Hudson River Rd. Co., 146 N. Y. 290; McKain v. Baltimore & Ohio Rd. Co., 65 W. Va. 233; Neallus v. Hutchinson Amusement Co., 126 Me. 469. This is

also the law in Ohio. New York, Chicago & St. Louis Ry. Co. v. Fieback, 87 Ohio St. 254. The fact that the guards are compensated by a private employer does not detract from the public character of their employment. The cited case held that a railroad policeman, appointed upon the application of the railroad company and commissioned by the Governor, though his salary is paid by the company, is a public officer and derives his authority directly from the state. The opinion points out (page 264) that "Police officers, by whomever appointed or elected are generally regarded as public or state officers deriving their authority from the sovereignty, for the purpose of enforcing the observance of the law. * * *" In Pennsylvania Rd. Co. v. Deal, 116 Ohio St. 408, a per curiam opinion, the rule announced in Railroad Co. v. Fieback was approved and relied on. The principles there laid down in respect to the functions of police officers, which are controlling here, compel the holding that these plant guards are municipal officers. Their functions and obligations are of a dual character. They have a private obligation to their employer and an obligation to the community as sworn, bonded and commissioned police officers. In case of industrial unrest and strikes on the part of the production employees, the obligations of the plant guards to the municipality and state would be incompatible with their obligations to the Union which, since it represents production employees, authorizes and directs the strike.

175 As pointed out in our previous opinion, it is the duty of the Board to consider the public interest as a material factor in selecting appropriate units for collective bargaining. Marshall Field & Co. v. National Labor Relations Board, 135 Fed. (2d) 391, 393 (C. C. A. 7); National Labor Relations Board v. Delaware-New Jersey Ferry Co., 128 Fed. (2d) 130, 137 (C. C. A. 3). We adhere to our conclusion that in the order under consideration the Board failed to give adequate consideration to the public welfare. A contrary conclusion would open wide the door to disorderly and criminal acts because of the limitation which the Board's order places on the power of the Government to furnish adequate police protection.

The application to enforce the order on review is denied.

176 In United States Circuit Court of Appeals

Order extending time to file petition for rehearing

Filed Apr. 29, 1946

The application filed April 22, 1946, for an extension of time to file a petition to rehear, to and including May 8, 1946, is allowed.

177 In the United States Circuit Court of Appeals for the Sixth Circuit

No. 9730

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

JONES & LAUGHLIN STEEL CORPORATION, RESPONDENT

On Petition for Enforcement of an Order of the National Labor Relations Board

Petition of the National Labor Relations Board for Rehearing

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Sixth Circuit:

Comes now the National Labor Relations Board, petitioner herein, and respectfully petitions this Court for a rehearing in the above-entitled case. In support of this petition, the Board shows as follows:

On April 4, 1946, the Court, upon rehearing pursuant to remand of this case by the Supreme Court of the United States (325 U. S. 838), issued its decision in which it denied enforcement of the Board's order herein requiring respondent to bargain collectively with the Union[1] as representative of respondent's
178 plant guards whom the Board found to constitute an appropriate bargaining unit. The ground upon which the Court rested its decision is that, although the guards are no longer militarized, they are "peace officers" of the State of Ohio and "commissioned policemen" of the City of Cleveland and, therefore, it would be against the public interest "for the Board to permit their organization by the same union which represents the production employees" of respondent (slip opinion, pp. 3–5).

The Board believes that the Court's decision is erroneous for the reason that (1) Section 10 (c) of the National Labor Relations Act precludes the Court from considering as a ground for refusing to enforce the Board's order, either the fact that the guards are public policemen, or the fact that they are represented by the same union which represents respondent's production employees, because respondent has never urged these facts before the Board as grounds for objecting to the Board's bargaining order; (2) the Act does not empower the Board to pass upon the propriety of the particular labor organization which the employees in an appropriate unit freely select as their bargaining representative; and (3) even

[1] The United Steelworkers of America (CIO).

if the Board had such power there would be no reason in the instant case for refusing to permit respondent's plant guards, who constitute an appropriate bargaining unit, to bargain through the Union; the supposition, given weight by the Court, that the bargaining pattern prescribed by the Board's order would, in
179 the event of industrial unrest, interfere with the proper functioning of the guards as public police officers, does not constitute such a reason.

I

Section 10 (e) of the Act commands that "No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the Court unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances." The Supreme Court in strictly interpreting "this explicit direction of Congress" recently declared that, "By this provision, Congress has said in effect that in a proceeding for enforcement of the Board's order, the court is to render judgment on consent as to all issues that were contestable before the Board but were in fact not contested," and that "justification" of a Board order, in the light of a particular objection, is not open for review by a court if no prior objection has been urged before the case gets into court and there is a total want of extraordinary circumstances to excuse 'the failure or neglect to urge such objection.'" (N. L. R. B. v. Cheney California Lumber Co., 66 S. Ct. 553, 554–555).

That the consideration upon which this Court now refuses to enforce the Board's order, namely the fact that respondent's guards are commissioned public policemen and are represented by the same union which represents respondent's production employees, was "contestable before the Board but was in fact not contested" is indisputable. The guards were commissioned police dur-
180 ing the entire period of their militarization (Stip. 4a, 7a)[2] but no evidence bearing on that fact was adduced either at the hearing in the representation proceeding or at the hearing in the unfair labor practice proceeding (R. 3–20, 57–70). Nor did respondent in its exceptions to the Trial Examiner's Intermediate Report (R. 97–98), or in any other manner, urge the fact as an objection to the proposed bargaining order (R. 91–92) or even mention it in any respect before the Board.[3]

[2] In its brief in the Supreme Court (p. 8) in opposition to the Board's petition for certiorari respondent stated that "All regular members of the guard force at the Otis works have, for years, been sworn, enrolled, and commissioned as special patrolmen on the police force of the City of Cleveland." And as this Court noted in its decision herein, plant guards in Ohio are automatically made public peace officers under the General Code of Ohio, Sec. 13432–1 (slip opinion, p. 3).

[3] Respondent not only failed to urge this objection before the Board but, upon rehearing of the case by this Court on remand by the Supreme Court, contended, as the Board does now, that Section 10 (e) of the Act precluded this Court from considering as an element in the case "the public police functions exercised by the plant guards" (slip opinion, p. 2, Resp. Br. on Remand, pp. 13–17).

We submit that since the public police status of the guards was known to respondent at the time this case was heard before the Trial Examiner, and since respondent made no exception on this ground to the recommendation of the Trial Examiner that the Board issue an order requiring respondent to bargain collectively with the Union as the exclusive representative of the guards, it is "not within the power of the court" (the Cheney case, supra) to consider the public police status of the guards as a basis for refusing enforcement of the Board's order. On the contrary this Court, under the doctrine of the Cheney case is required to "render judgment on consent" as to this issue as to which there is a "total want of extraordinary circumstances to excuse" respondent's "failure or neglect to urge" it as an objection before the Board. The Cheney case (supra). See also Marshall Field & Co. v. N. L. R. B., 318 U. S. 253; May Department Stores Co. v. N. L. R. B., 66 S. Ct. 203, 209; N. L. R. B. v. Parkers Prairie Cooperative Creamery Association (C. C. A. 8), decided April 8, 1946, 17 L. R. R. 1241, 1242; N. L. R. B. v. Kinner Motors, Inc., and N. L. R. B. v. Van DeKamp's Holland-Dutch Bakers (C. C. A. 9), decided March 26, 1946, 17 L. R. R. 1205; N. L. R. B. v. Winter-Weiss Co. (C. C. A. 10), decided April 13, 1946; N. L. R. B. v. Illinois Tool Works (C. C. A. 7), decided February 27, 1946, 17 L. R. R. 946, 948.[1]

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Nor does the order of remand by the Supreme Court relieve this Court of the injunction of Section 10 (e) of the Act with respect to the public police status of the guards, as this Court suggested in its opinion (slip opinion, pp. 2–3). The public police status of the guards, as we have indicated (supra, pp. 3–4) antedated their demilitarization. It was in no sense one of the "alleged changed circumstances with respect to the demilitarization of the employees involved" to which this Court was directed to give "further consideration" upon remand (325 U. S. 838). It was, and is, a factor which no party has ever raised in this case, as bearing upon the propriety of the Board's order. In these circumstances the "limitation [in Section 10 (e) of the Act] which Congress has placed upon the power of courts to review orders of the Labor Board is decisive * * *" of this case (the Cheney case, 66 S. Ct. at 554).

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[1] This limitation upon the power of courts reviewing Board orders, which the Supreme Court has recognized, is analogous to that applied in cases involving review of rulings of a referee or special master appointed by a Federal District Court. Where a party fails to except in the District Court to such rulings, the appellate court may not consider the objection. Burns v. Rosenstein, 135 U. S. 449, 455–456; Brockett v. Brockett, 44 U. S. 690, 691–692. And this is so even where an objection may have been "noted before the referee" at the hearing, but where no formal exception to the ruling was made to the District Court. Fruit Growers' Express Co. v. Plate Ice Co., 59 F. 2d 605, 610 (C. C. A. 4), cert. denied 287 U. S. 642.

Just as Section 10 (c) of the Act precludes the Court from considering the public police status of the guards as a factor bearing upon the question of the validity of the Board's order, it also precludes the consideration which the Court has given to the circumstance that the Union, which represents the guards, also represents respondent's production employees. This is so because, in the Court's view, the impropriety of permitting the Union to act as bargaining agent of both the guards and the production workers results solely from the fact that the guards are public police (slip opinion, pp. 3–5).

But even if the fact that the same union represents both the guards and the production workers be considered apart from the matter of the public police status of the guards, it is not properly an issue before the Court in this case because it was never raised before the Board as an objection to the collective bargaining
183 pattern recommended by the Trial Examiner and prescribed by the Board's order (R. 91, 99–100).

Evidence adduced at the hearing in the representation proceeding (R. 7–8, 16–17, 19) established the fact that the Union also represented a separate unit of respondent's production employees. But this circumstance was not even mentioned in respondent's exceptions to the Trial Examiner's Intermediate Report (R. 93–98), nor presented to the Board in any other manner as grounds for an "objection" to a Board order requiring respondent to bargain with the Union as representative of the guards.[5]

Following the hearing in the representation case respondent filed with the Board, in lieu of a brief, a statement made by an official of the Bethlehem Steel Corporation to the House Military Affairs Committee (R. 15–16, 72). This statement declared, in part, that foremen and plant guards occupied analogous positions insofar as their bargaining rights under the Act were concerned and that neither group should be permitted to join any union in the first place and, in any event, should not be permitted to join the same union which represented the employer's production employees. But clearly the mere submission of such a statement to the Board in the course of the proceeding in the representation case does not satisfy the requirement of Section 10 (c) of the Act that an "objection" must be "urged before the Board" before
184 it may be "considered by the court," particularly in view of respondent's failure to mention the issue in its exceptions to the Trial Examiner's Intermediate Report. Indeed respondent did nothing here to "apprise the Board that * * * * [respondent] intended to press the question now presented" (Marshall Field and

[5] The fact that testimony appears as to a matter which was not made an issue by the pleadings before the Board does not properly make the matter an issue in the case. N. L. R. B. v. Bradford Dyeing Asso., 310 U. S. 318, 340–342.

Company v. N. L. R. B., 318 U. S. 253, 255). And respondent's failure to raise the question, we submit, precludes the Court from considering it (supra, pp. 4–5).

The fact that the Board, in its decision in the representation proceeding (R. 73–74), observed that the Union also represented respondent's production employees does not overcome the effect of respondent's failure to raise the issue before the Board. By the time the unfair labor practice proceeding was before the Board this particular question had become completely submerged and respondent did nothing to bring it to the Board's attention as an issue in the case. As the case now stands, therefore, the Court's decision turns upon an issue which was never raised before the Board and upon which the Board has not had an opportunity to pass judgment upon a considered appraisal of specific contentions contrary to the result reached by the Board in its decision.

The purpose of the limitation in Section 10 (e) of the statute is to afford the Board "opportunity to consider on the merits questions to be urged upon review of its order" (the Marshall Field case, 318 U. S. at 256) and to assure that "all controversies of fact, and the allowable inferences from the facts, be threshed out, certainly in the first instance, before the Board" (the Cheney
185 case, 66 S. Ct. at 555). But, as we have seen, if an issue has not been raised before the Board it is too late to raise it by the time the case reaches the Circuit Court of Appeals and, in our view, the Court would be obliged to ignore the issue as a factor in the case. However, if this Court in the instant case believes that the public police status of the guards has a serious bearing upon the validity of the Board's order, the proper procedure, we submit, would be to remand the case to the Board for consideration of that fact "in the first instance," together with the "allowable inferences" therefrom, and for a determination of the question whether this newly revealed fact affects the propriety of the bargaining pattern the Board has thus far sanctioned in this case.[6] For the reasons stated below (infra, pp. 13–16), however, we submit that the Board's order should be enforced without remand, since there appears to be no justification for the view that the bargaining pattern prescribed by the Board's order will interfere with the guards' performance of their duty as public police officers.

[6] Since the fact that the same union represents separate bargaining units of respondent's guards and production workers did not arise as one of the "changed circumstances with respect to the demilitarization" of the guards, the issue with respect to that fact was not placed before this Court by reason of the order of remand of the Supreme Court any more than was the question of the effect upon the Board's order of the public police status of the guards (supra, pp. 5–6).

II

Assuming, contrary to the conclusions discussed above, that this Court was warranted in giving consideration to the fact
186 that respondent's guards are commissioned public police and are represented by the same union which represents respondent's production employees, the ground upon which the Court refused enforcement of the Board's order has no valid basis in law.

Although the Court stated that "it is the duty of the Board to consider the public interest as a material factor *in selecting appropriate units* for collective bargaining" (slip opinion, p. 5 [italics supplied]) and concluded that the Board here had "failed to give adequate consideration to the public welfare" in issuing the instant order (ibid.), we understand the rationale of the Court's decision to be that while the Board's determination that the guards constituted an appropriate bargaining unit may have been proper (the "precise question here is not whether the plant guards should be permitted to organize," slip opinion, p. 3), the Board's bargaining order is defective because it requires respondent to bargain as to its guards, who are public police officers, with the same union which represents respondent's production employees, and that such a bargaining pattern would be against public policy because it would interfere with the proper functioning of the guards in their capacity as public policemen (slip opinion, pp. 4–5). In short, the Court apparently holds that the Board should not permit respondent's guards to bargain, under the Act, through the Union, which they have selected as their bargaining representative, because that union also represents respondent's production employees. But the Board is of the opinion
187 that it does not have the power, under the Act, to effect such limitation upon the statutory bargaining rights of employees.

Recently, in Matter of Jones & Laughlin Steel Corporation, 66 N. L. R. B., No. 51, decided March 7, 1946, 17 L. R. R. 971, 972–973, the Board announced its opinion that Congress did not empower it to restrict the freedom of choice of any unit of employees and that it would, in fact, be an abuse of the Board's administrative discretion to refuse to certify any representative freely chosen by employees in an appropriate bargaining unit. The Board held, as it had earlier held in Matter of Godchaux Sugars, Inc., 44 N. L. R. B. 874, 877, that this result was compelled by Section 1 of the Act which states the Congressional policy to encourage "the exercise by workers of full freedom of association, self-organiza-

tion, and designation of representatives *of their own choosing*," (italics supplied).[7]

The Board's view that the statute does not authorize it to impose limitations upon the range of choice of representatives open to employees is supported, if not required, by the decision of the Supreme Court in Hill v. Florida, 325 U. S. 538. There the Supreme Court held invalid, because it conflicted with the
188 National Labor Relations Act, a state statute which purported to restrict the field of those who could act as collective bargaining representatives of employees. In so holding the Supreme Court emphasized that the purpose of the National Labor Relations Act is "to encourage collective bargaining and to protect the 'full freedom' of workers in the selection of bargaining representatives of their own choice." The Court declared that "Congress attached no conditions whatsoever to their freedom of choice in this respect. Their own best judgment, not that of someone else, was to be their guide. 'Full freedom' to choose an agent means freedom to pass upon the agent's qualifications." (325 U. S. at 541.) Clearly then, "the function assigned to the Board is not the choice of the labor organization to represent a bargaining unit, for that is to be the free choice of the majority of the employees in some defined group of employees which the Board finds to constitute the appropriate unit" (Pittsburgh Plate Glass Co. v. N. L. R. B., 313 U. S. 146, 171–172, opinion of Chief Justice Stone, dissenting on other grounds).

This Court's decision in the instant case, therefore, directs the Board in future similar cases[8] to perform, in the name of the public welfare, a supervisory function over the choice of
189 representatives of bargaining units of plant guards, which function, the Board believes, the Act prohibits it from performing. The Board's view, we submit, represents a reasonable interpretation of the Act in accord with the holding of the Supreme Court in Hill v. Florida (supra).

III

Even assuming that the Board has the power to limit the choice of representatives made by an appropriate unit of employees, the Court's decision herein that the Board improperly

[7] The recent Jones & Laughlin case cited concerned the bargaining rights of supervisory employees, not of plant guards. The broad principle there adopted by the Board, however, applies to "employees" as such, regardless of the nature of their duties. Since the Board's decision in this recent Jones & Laughlin case had not been issued at the time the instant case was argued before this Court upon remand, the Board's counsel was unable to state the Board's position in this respect as definitely as it is set forth in the Board's decision in that case.

[8] The Board has decided and continues to be presented with large numbers of cases involving the bargaining rights of plant guards who are deputized or commissioned as public police officers. Eg. Matter of Bethlehem-Fairfield Shipyard, Inc., 61 N. L. R. B. 901, 905–906; Matter of Standard Steel Spring Co., 62 N. L. R. B. 660, 662; Matter of Frick Company, 63 N. L. R. B. 837, 840; Matter of Rockbestas Products Company, 47 N. L. R. B. 1312, 1313–1314.

recognized the plant guards' selection of the Union as their representative was not warranted. The Court has substituted for the judgment of the Board that the bargaining pattern here involved would effectuate the policies of the Act, its own contrary judgment that it would be detrimental to the public interest to permit plant guards who are commissioned public police officers, and who otherwise constitute an appropriate bargaining unit, to bargain collectively with respondent through a union which also represents a separate bargaining unit of respondent's production employees. In the Court's view, the bare facts herein compel the conclusion that in "case of industrial unrest and strikes on the part of the production employees, the obligations of the plant guards to the municipality and state would be incompatible with their obligations to the Union which, since it represents production employees, authorizes and directs the strike" (slip opinion, p. 4); accordingly, the Court concludes, the Board's order is against the public interest "because of the limitation which * * * [it]
190 places on the power of the Government to furnish adequate police protection" (id. p. 5).

But the Court's conclusion is based entirely upon supposition. There is nothing in this record or in the Board's experience which demonstrates or even suggests that the conflict of interests cited by the Court actually exists or that, if it does, it would result in interference with the proper functioning of the guards in their capacity as public police officers. On the contrary, the Board's conviction that there is "no necessary conflict between self-organization for collective bargaining and the faithful performance of duty" (Matter of Chrysler Corporation, [redacted] L. R. B. 881, 885–886) has been borne out by experience. Despite the wide application of the bargaining pattern sanctioned by the Board in the instant case, in cases involving militarized plant guards as well as cases involving guards who are commissioned as public police officers, the Board has received no indication from any source that the dangers to the public interest allegedly inherent in its policy have in fact materialized in any case.*

As the Board has observed in a similar case, "the limited police powers of the guards * * * serve only to implement
191 their monitorial authority, and do not alter their status as employees" of the company (Matter of Bethlehem-Fairfield Shipyards, Inc., 61 N. L. R. B. 901, 906). As such "employees" the guards are entitled to exercise the bargaining rights guaran-

* In more than 80 cases the Board has certified, as bargaining representatives of militarized plant guards, unions which also represented separate units of other employees of the same employer. (See Board's brief on remand, p. 13, n. 8.) The Board has applied the same policy in numerous cases involving plant guards who are commissioned as public police officers. Eg. Matter of Standard Steel Spring Co., 62 N. L. R. B. 660, 662–663; Matter of Frick Company, 63 N. L. R. B. 837, 838–841.

teed by the Act, as both the Board and the Court have declared (slip opinion, p. 3). It is difficult to see, however, on the basis of the record herein and of the Board's experience, how the guards' full exercise of their bargaining rights "would open wide the door to disorderly and criminal acts because of the limitation which the Board's order [in sustaining those rights] places on the power of the Government to furnish adequate police protection" (slip opinion, p. 5). There is nothing beyond pure speculation to suggest that enforcement of the Board's order would interfere with the guards' proper performance of their duties. And the Board's order in no sense limits the authority of either the "government" or the Company to discipline guards should they fail to perform their duties. Moreover, labor organizations themselves which represent plant protection employees recognize the obligation of such employees, by the very nature of their function, to perform their duty of protecting the employer's property by remaining on the job when other employees are called out on strike.[10]

Upon the fact situation described above, the Board's de-
192 termination that it will effectuate the policies of the Act to require respondent to bargain with the Union as the representative of its plant guards cannot be called unreasonable and without basis in fact and law. Certainly the speculation as to imminent danger to the public welfare, upon which the Court relied, does not constitute a proper basis for setting aside the judgment of the Board. N. L. R. B. v. Hearst Publications, Inc., 322 U. S. 111, 130–131, and cases there cited.

Wherefore, it is prayed that a rehearing in this case be granted, and that on such rehearing the order of the Board be enforced.

Respectfully submitted.

DAVID A. MORSE,
General Counsel,
A. NORMAN SOMERS,
Asistant General Counsel,
RUTH WEYAND,
MARCEL MALLETT-PREVOST,
Attorneys,
National Labor Relations Board.

APRIL 1946.

[10] We have set out in the appendix hereto (infra, pp. 18–21) typical clauses appearing in collective bargaining contracts made by unions as representatives of plant protection employees, which provide that such employees shall continue to perform their duties to the employer during strikes called by other employees.

193 CERTIFICATE OF COUNSEL

Comes now A. Norman Somers, Assistant General Counsel for the National Labor Relations Board, and certifies that he has read and knows the contents of the foregoing petition, and that said petition is filed in good faith, and not for purposes of delay.

A. NORMAN SOMERS,
Assistant General Counsel,
National Labor Relations Board.

WASHINGTON, D. C., *April 1946.*

194 APPENDIX

The following excerpts are from collective bargaining agreements which cover plant protection employees only and are on file in the Bureau of Labor Statistics, United States Department of Labor, Washington, D. C.

Agreement between American Car and Foundry Company, Detroit, Michigan, and United Automobile Workers, Local 114 (CIO), dated January 31, 1945:

"It is realized by the parties hereto that the adequate and continuous protection of the Company's plant, premises and products is of paramount importance and each party agrees that there shall be no interference whatsoever in the maintenance of satisfactory plant protection so long as required by the Company, and Plant Protection Employees covered by this agreement shall continue to perform their duties irrespective of a strike of other unions or employees at the Company's plant."

Agreement between General Motors Corporation, Pontiac, Michigan, and United Automobile Workers, Local 416 (CIO), dated May 21, 1945:

"The Union recognizes that it is the responsibility of the Plant Protection Employees to guard and protect the plants, premises and property of the Company at all times and under all circumstances. The Union agrees that its members shall faithfully discharge this responsibility and, during the life of this Agreement, that it will not cause, or permit its members to cause, nor will any member of the Union take part in any sit-down, stay-in, or
195 curtailment of work. The Union will not cause or permit its members to cause, nor will any member of the Union take part in any strike, stoppage of work, or other interference with, or refusal to perform the duties regularly assigned to them, or picket any of the Company's plants or premises until all the bargaining procedure, as outlined in this Agreement, has been exhausted. The Union further agrees, in the event of any controversy between the Company and any other group or organiza-

tion of its employees, resulting or threatening to result in any strike, stoppage of work, or other interference with production, that its members will discharge the duties assigned to them. The Company reserves the right to cancel this Agreement in the event of any violation of this section, and to discipline any employees who engage in such violation."

Agreement between Federal Mogul Corporation, Detroit, Michigan, and United Automobile Workers, Local 114 (CIO), dated February 2, 1944:

"It is realized by the parties hereto that the adequate and continuous protection of the Company's Plant, Premises and Products, is of paramount importance, and each party agrees that there shall be no interference whatsoever in the maintenance of satisfactory Plant Protection as long as required by the Company, and Plant Protection Employees covered by this agreement shall continue to perform their duties irrespective of a strike of other unions of employees at the Company's Plant."

Agreement between Major & Independent Motion Picture Studios, Los Angeles, California, and Building Service Employees, Local 197 (AFL), dated November 17, 1944:

"The Union agrees that it will not call nor engage in any strike or stoppage of work. The Union agrees that it will use its best efforts to compel its members to perform their services for the Producer, even though other persons or groups of persons may be on strike.

"The Producer agrees that it will not call or engage in any lockout against the Union."

Agreement between the Missouri Valley Bridge and Iron Company, Evansville, Indiana, and Federal Labor Union, Local 23509 (AFL), dated February 11, 1944:

"Workmen employed under the terms of this Agreement will be permitted to go through picket lines whenever and wherever they shall be established for the purpose of protecting life and property, but, in no case, shall men so working be permitted to do the work of any other craft or do any other work, other than that which is required for the performance of their normal duties or such other acts as may be immediately necessary to protect life or property. It is further understood and agreed that this Union will not prevent any member from exercising his full policy powers in preserving order and protecting property, provided, however, that employees covered by this Agreement shall never be used as strikebreakers."

The following excerpts are from collective bargaining agreements on file with the Bureau of Labor Statistics which cover watchmen and maintenance employees.

Agreement between American Hide and Leather Company, Lowell, Massachusetts, and Fur and Leather Workers, Local 270 (CIO), dated April 4, 1945:

"It is realized by the parties hereto that the adequate and continuous protection of the Company's Plant, Premises, and Products, is of paramount importance, and each party agrees
197 that there shall be no interference whatsoever in the maintenance of satisfactory Plant Protection as long as required by the Company, and Plant Protection Employees covered by this agreement shall continue to perform their duties irrespective of a strike of other unions of employees at the Company's Plants."

Agreement between Naumkeag Steam Cotton Co., Salem and Peabody, Massachusetts, and Textile Workers Union of America, Local 74 (CIO), dated December 10, 1940:

"Either party may propose to the other at any time general increases or decreases in wages by giving the other party written notice of any change or changes desired. The Company and the Union will meet as promptly as possible in an endeavor to reach an agreement; if no agreement is reached within two (2) weeks then either party may be free to take such action as it deems proper. Should application of this section lead to a work stoppage, the Union agrees that firemen and a sufficient number of crewmen to provide necessary fire and other necessary protection will remain on their jobs."

198 In United States Circuit Court of Appeals

Order denying petition for rehearing

Filed May 20, 1946

The petition for rehearing is denied.

199 [Clerk's certificate to foregoing transcript omitted in printing.]

U. S. GOVERNMENT PRINTING OFFICE 1946

Supreme Court of the United States

No. 418, October Term, 1946

Order allowing certiorari

Filed December 23, 1946

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE: 1947